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Executive Orders

EXECUTIVE ORDER JBE 17-23

Emergency Suspension of Fees—Department of Health

WHEREAS, the federal government has issued an Emergency Declaration and Major Disaster Declaration due to the widespread damage caused by flooding related to Hurricane Harvey;

WHEREAS, some individuals affected by this flooding event were born in Louisiana, are currently displaced, and are taking refuge in emergency shelters in the State of Texas;

WHEREAS, the flooding damaged or destroyed documents important to many of these affected individuals or caused these individuals to lose such documents, including their birth certificates;

WHEREAS in some cases individuals currently residing in emergency shelters in Texas need copies of their birth certificates for various purposes, including obtaining certain benefits provided by the State of Texas and/or the federal government; and

WHEREAS, in response to the damage done to some of these individuals' birth certificates and their need to have a copy of their birth certificates for purposes of obtaining certain benefits from the State of Texas and/or the federal government, the Secretary of the Department of Health has requested suspension of certain provisions of law related to fees and charges, which would be incurred by those affected individuals who have been required to replace damaged, destroyed or lost birth certificates.

NOW THEREFORE, I JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The following specific provisions of the Louisiana Revised Statutes of 1950 related to the imposition of fees or charges related to transactions with the Department of Health, or their authorized agent, as qualified by this Order, are hereby suspended for transactions by individuals affected by the flooding related to Hurricane Harvey who are currently residing in an emergency shelter in the State of Texas when, as determined by any guidelines or directions issued by the Secretary, the request is a result of the above described emergency conditions:

- La. R.S. 40:40(2), to the extent it requires payment of a fee for production of a duplicate birth record.
- La. R.S. 46:2403(B), to the extent it requires the Department of Health to collect an additional fee upon the filing of a request for a duplicate birth record for remittance to the Children's Trust Fund.

SECTION 2: This Order is effective upon signature and shall apply retroactively from August 24, 2017, until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 11th day of September, 2017.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1710#004

EXECUTIVE ORDER JBE 17-24

Emergency Trip Permits and International Fuel Tax Agreement (IFTA) Waiver

WHEREAS, pursuant to the Louisiana Homeland Security and Emergency Assistance and Disaster Act, La. R.S. 29:721, *et seq.*, the Governor declared a state of emergency in Proclamation Number 104 JBE 2017;

WHEREAS, due to Hurricane Harvey, portions of Louisiana and Texas experienced a flood of historic proportions, with thousands of people dislocated from flooded homes that can only be reached by boat or high water trucks;

WHEREAS, the flooding from Hurricane Harvey and its aftermath poses a threat to citizens and communities across Louisiana and Texas;

WHEREAS, thousands of families and businesses in Louisiana and Texas have suffered damages due to this devastating hurricane and its aftermath;

WHEREAS, the safety and welfare of the inhabitants of the affected areas of Louisiana and Texas require that the movements of operators of commercial motor carriers traveling on the public highways of the state of Louisiana for the purpose of emergency preparedness and disaster relief efforts be expedited; and

WHEREAS, assistance is headed to hurricane impacted areas from all around the country and time is of the essence.

NOW THEREFORE I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and the laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The commercial vehicle registration and license tax statutory and regulatory requirements, including but not limited to La. R.S. 47:511.1 and La. R.S. 47:818.44, regarding the purchase of trip permits for registration and fuel for commercial motor carriers shall be waived for those engaged in emergency preparedness or disaster relief efforts traveling in or through the state of Louisiana to provide emergency preparedness or disaster relief efforts.

SECTION 2: Nothing in this Order shall be construed to allow any vehicle transporting emergency equipment or commodities for disaster preparedness or relief to violate any Waiver Order issued by the Department of Transportation and Development Secretary Shawn Wilson pursuant to La. R.S. 32:387.

SECTION 3: This order is effective upon signature and shall apply retroactively from, Friday, August 25, 2017, until 11:59 p.m. on October 1, 2017, unless amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law prior to such time.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 13th day of September, 2017.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1710#005

EXECUTIVE ORDER JBE 17-25

Highway Project Selection and Delivery Enhancement

WHEREAS, Article VII, Section 27(B) of the Constitution of Louisiana requires monies in the Transportation Trust Fund appropriated by the legislature to be allocated pursuant to programs established by law that establish a system of priorities for the expenditure of the monies;

WHEREAS, La. R.S. 48:229.1 provides a minimum list of factors relative to the cost of the projects and anticipated revenues to be considered by DOTD when selecting projects to be included in the Highway Priority Program;

WHEREAS, accountability and transparency regarding expenditures of Transportation Trust Fund revenue for transportation projects are of public interest;

WHEREAS, improving the Highway Priority Program within DOTD to better demonstrate the use, and limited availability, of funds for transportation projects and managing the expectation of the public is in the best interest of the people of Louisiana;

WHEREAS, this Administration recognizes the benefits of enhanced transparency and accountability measures and it is the intent of this Administration to set and deliver high standards for transparency and accountability;

WHEREAS, separate and apart from enhancements to the Highway Priority Program, this Administration is committed to providing reasonable relief as it relates to regulatory provisions that create hardships for commerce and economic development;

WHEREAS, Title 70, Chapter 15 of the Louisiana Administrative Code provides for DOTD's necessary and important authority to regulate access to the state highway

system, including the ability of an applicant to appeal a DOTD district office decision to the DOTD Headquarters;

WHEREAS, it is the intent of this Administration to ensure that applicants seeking access to the state highway system have the ability to appeal in a manner that results in a timely, reasonable decision that is considerate of implications for the safety and mobility of the traveling public, as well as commerce and economic development; and

WHEREAS, it is the unwavering policy of the Executive Branch to enhance the data-driven nature of the Highway Priority Program and facilitate the right of Louisianans to know and have access to information with which they may hold DOTD accountable.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the power and authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: In furtherance of the minimum list of factors relative to the cost of the projects and anticipated revenues to be considered by DOTD when selecting projects to be included in the Highway Priority Program, DOTD shall consider the following:

A. Whether transportation funding is being utilized in the most cost-effective manner to ensure the state is getting a positive return on the investment of state and federal funds in transportation projects.

B. Whether use of state and federal transportation funding for administrative costs of DOTD can be minimized.

C. The funding available from sources other than the state or federal government for a highway or bridge project.

D. The prioritization for Pavement Preservation Projects, not including those on the National Highway System, as provided by the district administrator for that district.

E. Whether the highway or bridge project will support the needs of the local and regional authorities with responsibility for transportation planning to ensure that there is an equitable distribution of transportation funding through the different regions of the state over time.

SECTION 2: DOTD is directed to develop and make publically available in an accessible format all projects in the Highway Priority Program categorized in three parts as follows:

A. Part 1 shall consist of projects that are scheduled to be let for construction during the first fiscal year based on anticipated and projected revenues available. A written explanation shall be provided for any project scheduled for letting in the previous fiscal year that was delayed. Each year as projects are completed from Part 1, they shall be deleted and replaced with projects from Part 2.

B. Part 2 shall consist of projects in development that are fully funded based on anticipated and projected revenues available for upcoming fiscal years. Each year as projects move from Part 2 to Part 1, they shall be replaced by projects from within the same project category that are identified as needs by the Department.

C. Part 3 shall consist of all projects in the program that can be funded if additional revenues become available.

SECTION 3: DOTD is directed to continue to comply with the Louisiana Government Performance and Accountability Act (LaPAS) as required by Act 1465 of the 1997 Regular Session relative to the methodology and outcomes of the DOTD Highway Priority Program capital projects in relation to the expenditure of funds.

SECTION 4: DOTD is directed to annually submit a report to the legislature that contains an expenditure breakdown of the avails of the motor fuel taxes utilized by the DOTD in accordance with the restricted purposes set forth in Article VII, Section 27(B) of the Constitution of Louisiana. DOTD is directed to supply relevant and necessary source information relating to reports required by this Section to the legislative auditor for the purpose of aiding in legislative audits upon request. The report shall include an explanation of expenditures in the following categories:

A. Administration and support services that include staff costs associated with executive level oversight and administrative supervision of the various business support functions of DOTD.

B. Transportation funding used for debt service and multimodal programs, including ports, aviation, freight, transit, and public works.

C. Operations and maintenance expenses that include non-administrative costs for activities such as repair and maintenance of pothole patching, mowing, ditch cleaning, striping, signal repair and installation, bridge repair, and maintenance.

D. Program and project delivery including actual construction and construction engineering costs for projects.

SECTION 5: DOTD is directed to modify the Appeals Process for Access Connection Permits as provided for in Title 70, Chapter 15 of the Louisiana Administrative Code to provide that applicants may appeal decisions of the DOTD district office directly to the Secretary for a final decision.

SECTION 6: This Executive Order is intended only to improve processes and public understanding of the Highway Priority Program within DOTD and does not create any right to administrative or judicial review, or any other right or benefit, substantive or procedural, enforceable at law or equitable by a party against the State of Louisiana, its agencies or instrumentalities, its officers or employees, or any other person.

SECTION 7: This Order is effective upon signature and shall remain in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 26th day of September, 2017.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1710#016

EXECUTIVE ORDER JBE 17-26

Flags at Half-Staff

WHEREAS, on Sunday night, October 1, 2017, more than 50 people were killed in an attack in Las Vegas, Nevada;

WHEREAS, over 500 others were injured during this tragic event;

WHEREAS, countless law enforcement officers, first responders, volunteers, and citizens risked their lives to provide immediate aid to the numerous victims; and

WHEREAS, Louisianans mourn with all whose loved ones were killed and injured in this horrible tragedy in Las Vegas, Nevada.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: As an expression of respect for victims of the Las Vegas attack, the flags of the United States and the State of Louisiana shall be flown at half-staff over the State Capitol and all public buildings and institutions of the State of Louisiana until sunset on Friday, October 6, 2017.

SECTION 2: This Order is effective upon signature and shall remain in effect until sunset, Friday, October 6, 2017, unless amended, modified, terminated, or rescinded prior to that date.

IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 2nd day of October, 2017.

John Bel Edwards
Governor

ATTEST BY
THE GOVERNOR
Tom Schedler
Secretary of State
1710#031

Emergency Rules

DECLARATION OF EMERGENCY

Department of Children and Family Services Economic Stability Section

Public Assistance Programs
(LAC 67:III.301, 307, 309, 313, 1209, 1229, 1255,
1987, 1988, 1999, 2103, 2107, 5307, and 5345)

The Department of Children and Family Services (DCFS), Economic Stability Section, has exercised the emergency provision of the Administrative Procedure Act, R.S. 49:953(B) to amend the *Louisiana Administrative Code* (LAC), Title 67, Part III, Economic Stability. Amendment is pursuant to the authority granted to the department by the Food and Nutrition Act of 2008, in accordance with federal regulations for the Supplemental Nutrition Assistance Program (SNAP) in 7 CFR and Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant. This Emergency Rule is adopted on September 29, 2017 and shall be effective October 1, 2017. It shall remain in effect for a period of 120 days.

Sections 301, 307, 309, and 313 are being amended to remove references to the Child Care Assistance Program (CCAP).

Sections 1209, 1999, and 5307 are being amended to update circumstances in which a concurrent notice is allowable.

Section 1229 is being amended to allow a dependent care deduction for any child who is not receiving CCAP.

Sections 1255 and 5345 are being repealed and Sections 1987, 1988, and 2103 are being amended to maintain compliance with Act 265 of the 2017 Regular Session of the Louisiana Legislature, which eliminated restrictions on eligibility for certain persons with prior drug convictions.

Section 2107 is being amended to update that there are three standard benefit amounts.

The department considers emergency action necessary to clarify the programs' administrative rules and facilitate the expenditure of TANF funds, which is authorized by Act 3 of the 2017 Second Extraordinary Session of the Louisiana Legislature.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

Subpart 1. General Administrative Procedures

Chapter 3. Hearings

§301. Definitions

A. For all purposes of these rules and regulations, the terms defined in this Chapter shall have the following meanings, unless the context of use clearly indicates otherwise.

* * *

Benefits—any kind of assistance, payments or benefits made by the department for Family Independence Temporary Assistance Program (FITAP), Strategies to Empower People (STEP) Program, Kinship Care Subsidy

Program (KCSP), or Supplemental Nutrition Assistance Program (SNAP).

* * *

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq., R.S. 36:474, and R.S. 46:237.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 11:689 (July 1985), amended by Department of Social Services, Office of Family Support, LR 25:2259 (November 1999), LR 26:350 (February 2000), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:965 (April 2012), amended by the Department of Children and Family Services, Economic Stability Section, LR 43:

§307. Time Limits for Requesting a Fair Hearing

A.1. When a decision is made on a case, the client is notified and is allowed the following number of days from the date of the notice to request a fair hearing.

FITAP	30 days
STEP Program	30 days
KCSP	30 days
SNAP	90 days

2. The client may appeal at any time during a certification period for a dispute of the current level of benefits.

B. - B.2. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq., and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2260 (November 1999), amended LR 26:350 (February 2000), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:965 (April 2012), amended by Department of Children and Family Services, Economic Stability Section, LR 43:

§309. Time Limits for Decisions to be Rendered

A. A prompt, definitive, and final decision must be provided within the number of days from the date of the fair hearing request as listed below.

FITAP	90 days
STEP Program	90 days
KCSP	90 days
SNAP	60 days

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq., R.S. 36:474, and R.S. 46:237.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999), amended LR 26:351 (February 2000), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:965 (April 2012), amended by Department of Children and Family Services, Economic Stability Section, LR 43:

§313. Continuation of Benefits

A. Recipients in all categories, except STEP Program, who request a fair hearing prior to the expiration of the advance notice of adverse action or within 13 days of the

date of concurrent notice must have benefits continued at, or reinstated to, the benefit level of the previous month, unless:

1. the recipient indicates he does not want benefits continued;
2. a determination is made at the hearing that the sole issue is one of existing or changing state or federal law; or
3. a change unrelated to the appeal issue affecting the client's eligibility occurs while the hearing decision is pending and the client fails to request a hearing after receiving the notice of change.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq., and R.S. 36:474.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2261 (November 1999), amended by the Department of Children and Family Services, Division of Programs, Economic Stability, LR 38:966 (April 2012), amended by Department of Children and Family Services, Economic Stability Section, LR 43:

Subpart 2. Family Independence Temporary Assistance Program

Chapter 12. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§1209. Notices of Adverse Actions

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the client at the time of action in the following situations:

1. the agency has factual information confirming the death of the FITAP payee;
2. the client signs a statement requesting reduction or closure and waiving the right to advance notice;
3. the client's whereabouts are unknown and agency mail directed to the client has been returned by the post office indicating no known forwarding address;
4. a client has been certified in another state and that fact has been established;
5. a child is removed from the home as a result of a judicial determination, or is voluntarily placed in foster care by his legal guardian;
6. the client has been admitted or committed to an institution;
7. the client has been placed in a skilled or intermediate nursing care facility or long-term hospitalization;
8. the agency disqualifies a household member because of an intentional program violation and the benefits of the remaining household members are reduced or terminated because of the disqualification;
9. the worker reduces or ends benefits at the end of a normal period of certification when the client timely reapplies;
10. the case is closed due to the amount of child support collected through child support enforcement services;
11. the client has been certified for Supplemental Security Income or foster care payments and that fact has been established;

12. the child is certified for kinship care subsidy payments;

13. the agency receives a written report signed by the head of household or other responsible household member which provides sufficient information for the agency to determine the household's benefit amount or ineligibility;

14. benefits are reduced or terminated effective the month following the simplified report month;

15. mass changes.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B. and R.S. 46:237, Act 58, 2003 Reg. Session, and Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2447 (December 1999), amended LR 26:349 (February 2000), LR 28:2565 (December 2002), LR 30:493 (March 2004), LR 32:1911 (October 2006), amended by the Department of Children and Family Services, Economic Stability Section, LR 43:

Subchapter B. Conditions of Eligibility

§1229. Income

A. - B.2. ...

C. Earned Income Deductions. Each individual in the income unit who has earned income is entitled to the following deductions only:

1. standard deduction of \$120;
2. \$900 time-limited deduction. This deduction is applied for six months when a recipient's earnings exceed the \$120 standard deduction. The months need not be consecutive nor within the same certification periods. The deduction is applicable for a six-month lifetime limit for the individual;
3. dependent care deduction. Recipients may be entitled to a deduction for dependent care for:
 - a. an incapacitated adult;
 - b. a child who is not receiving CCAP; or
 - c. effective May 1, 2006, the amount charged by a child care provider that exceeds the CCAP maximum for a child in care.

D. - G. ...

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq., and 10602(c), R.S. 36:474, R.S. 46:231.1(B), R.S. 46:231.2, P.L. 108-447, Act 16, 2005 Reg. Session, and 7 CFR 273.2(j).

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2449 (December 1999), amended LR 26:1342 (June 2000), LR 26:2831 (December 2000), LR 31:2956 (November 2005), LR 32:1616 (September 2006), LR 32:1912 (October 2006), LR 34:2678 (December 2008), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2524 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 40:1675 (September 2014), LR 42:1651 (October 2016), amended by the Department of Children and Family Services, Economic Stability Section, LR 43:

§1255. Individuals Convicted of a Felony Involving a Controlled Substance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 USC 601 et seq., R.S. 36:474, and R.S. 46:231.2.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 25:2454 (December 1999), repealed by the Department of Children and Family Services, Economic Stability Section, LR 43:

Subpart 3. Supplemental Nutritional Assistance Program (SNAP)

Chapter 19. Certification of Eligible Households
Subchapter J. Determining Household Eligibility and Benefit Levels

§1987. Categorical Eligibility for Certain Recipients

A. Households Considered Categorically Eligible

1. Households in which a member is a recipient of benefits from the FITAP, STEP, and/or Kinship Care Subsidy Program, and households in which all members are recipients of SSI, shall be considered categorically eligible for SNAP.

2. "Recipient" includes an individual determined eligible for TANF or SSI benefits, but the benefits have not yet been paid.

3. "Recipient" shall also include a person determined eligible to receive zero benefits, i.e., a person whose benefits are being recouped or a TANF recipient whose benefits are less than \$10 and therefore does not receive any cash benefits.

4. A household shall not be considered categorically eligible if:

- a. any member of that household is disqualified for an intentional program violation;
- b. the household is disqualified for failure to comply with the work registration requirements.

5. The following persons shall not be considered a member of a household when determining categorical eligibility:

- a. an ineligible alien;
- b. an ineligible student;
- c. an institutionalized person;
- d. an individual who is disqualified for failure to comply with the work registration requirements;
- e. an individual who is disqualified for failure to provide or apply for a Social Security number;
- f. an individual who is on strike.

6. Households which are categorically eligible are considered to have met the following SNAP eligibility factors without additional verification:

- a. resources;
- b. Social Security numbers;
- c. sponsored alien information;
- d. residency.

7. These households also do not have to meet the gross and net income limits. If questionable, the factors used to determine categorical eligibility shall be verified.

8. Categorically eligible households must meet all SNAP eligibility factors except as outlined above.

9. Changes reported by categorically-eligible SNAP households shall be handled according to established procedures except in the areas of resources or other categorical eligibility factors.

10. Benefits for categorically-eligible households shall be based on net income as for any other household. One and two person households will receive a minimum benefit of \$15. Households of three or more shall be denied if net income exceeds the level at which benefits are issued.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with F.R. 51:28196 et seq., 7 CFR 271, 272, 273.10, and 274, F.R. 56:63612-63613, P.L. 104-193, 7 CFR 273.2(j)(2)(xi), Act 58, 2003 Reg. Session, 7 CFR 273.2, (j), and P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:90 (February 1987), amended by the Department of Social Services, Office of Family Support, LR 18:1267 (November 1992), LR 24:1783 (September 1998), LR 26:349 (February 2000), LR 27:867 (June 2001), LR 27:1934 (November 2001), LR 30:495 (March 2004), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2531 (November 2010), amended by the Department of Children and Family Services, Economic Stability Section, LR 40:1312 (July 2014), LR 43:

§1988. Eligibility Disqualification of Certain Recipients

A. Fleeing felons and probation/parole violators are ineligible for benefits.

AUTHORITY NOTE: Promulgated in accordance with P.L. 104-193, R.S. 46:233.1, P.L.105-33, and P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 23:83 (January 1997), amended LR 23:590 (May 1997), LR 23:1710 (December 1997), LR 24:1783 (September 1998), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2532 (November 2010), amended by Department of Children and Family Services, Economic Stability Section, LR 43:

Subchapter M. Notice of Adverse Action

§1999. Reduction or Termination of Benefits

A. A notice of adverse action shall be sent at least 13 days prior to taking action to reduce or terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the household at the time of action in the following situations:

1. the agency disqualifies a household member because of an intentional program violation and the benefits of the remaining household members are reduced or ended because of the disqualification;

2. benefits are reduced or terminated at the end of the certification period when the client timely reapplies;

3. the client has been certified in another state and that fact has been established;

4. the client signs a statement requesting closure or reduction in benefits and waives the right to advance notice.

5. benefits are reduced or terminated effective the month following the simplified report month;

6. the agency receives a written report signed by the head of the household or other responsible household member which provides sufficient information for the agency to determine the household's benefit amount or ineligibility;

7. mass changes;

8. based on reliable information, the agency determines that the household has moved or will be moving out of the state prior to the next monthly issuance;

9. the household applied for cash assistance and SNAP at the same time and has been getting SNAP benefits while waiting for approval of the cash assistance grant;

10. the client was a certified resident in a drug or alcohol treatment center or a group living arrangement which loses its state certification or FNS disqualifies it as a retailer;

11. a household certified under expedited processing rules provides postponed verification which reduces or terminates benefits.

B. - B.4. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 273.12(a)(1)(vii) and P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 9:324 (May 1983), amended by the Department of Social Services, Office of Family Support, LR 24:108 (January 1998), LR 32:2270 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2533 (November 2010), amended by Department of Children and Family Services, Economic Stability Section, LR 43:

Chapter 21. Louisiana Combined Application Project (LaCAP)

Subchapter A. Household Concept

§2103. Household Definition

A. The definition of a *household* is an individual who is receiving Supplemental Security Income (SSI) and:

1. is at least 60 years old;
2. has a federal living arrangement of code "A" as determined by the Social Security Administration (SSA);
3. is not institutionalized, or otherwise ineligible for SNAP due to immigration status or an intentional program violation; and
4. lives alone or declares to purchase and prepare food separately from others in a shared living situation.

B. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7 CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2271 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010), amended by Department of Children and Family Services, Economic Stability Section, LR 43:

§2107. Benefits

A. Participants will receive one of three standard amounts of SNAP benefits based on the household's total combined shelter (housing and utilities) costs.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 271.3(c), 7CFR Part 282, and Section 17 of the Food Stamp Act of 1977, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 32:2271 (December 2006), amended by the Department of Children and Family Services, Economic Stability and Self-Sufficiency Section, LR 36:2534 (November 2010), amended by Department of Children and Family Services, Economic Stability Section, LR 43:

Subpart 13. Kinship Care Subsidy Program (KCSP)

Chapter 53. Application, Eligibility, and Furnishing Assistance

Subchapter A. Application, Determination of Eligibility, and Furnishing Assistance

§5307. Notices of Adverse Actions

A. A notice of adverse action shall be sent at least 13 days prior to taking action to terminate benefits. In some circumstances advance notice is not required. A concurrent notice shall be sent to the client at the time of action in the following situations:

1. the agency has factual information confirming the death of the KCSP payee;

2. the client signs a statement requesting reduction or closure and waiving the right to advance notice;

3. the client's whereabouts are unknown and agency mail directed to the client has been returned by the post office indicating no known forwarding address;

4. a client has been certified in another state and that fact has been established;

5. a child is removed from the home as a result of a judicial determination, or is voluntarily placed in foster care by his legal guardian;

6. the client has been admitted or committed to an institution;

7. the client has been placed in a skilled or intermediate nursing care facility or long-term hospitalization;

8. the agency disqualifies a household member because of an intentional program violation and benefits are terminated because of the disqualification;

9. the worker reduces or ends benefits at the end of a normal period of certification when the client timely reapplies;

10. the case is closed due to the amount of child support collected through child support enforcement services;

11. the agency receives a written report signed by the head of household or other responsible household member which provides sufficient information for the agency to determine the client's ineligibility;

12. benefits are reduced or terminated effective the month following the simplified report month;

13. mass changes;

14. effective May 1, 2006, the child has been certified for Supplemental Security Income and that fact has been established;

15. the child has been certified for foster care payments and that fact has been established.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, R.S. 46:237, and Act 16, 2005 Reg. Session.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:351 (February 2000), amended LR 28:2565 (December 2002), LR 32:1913 (October 2006), amended by the Department of Children and Family Services, Economic Stability Section, LR 43:

Subchapter B. Conditions of Eligibility

§5345. Individuals Convicted of a Felony Involving a Controlled Substance

Repealed.

AUTHORITY NOTE: Promulgated in accordance with 42 U.S.C. 601 et seq., R.S. 36:474, R.S. 46:231.1.B, and R.S. 46:237.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 26:356 (February 2000), repealed by the Department of Children and Family Services, Economic Stability Section, LR 43:

Marketa Garner Walters
Secretary

1710#019

DECLARATION OF EMERGENCY

Office of the Governor Commission on Law Enforcement and Administration of Criminal Justice

Peace Officer Standards and Training (LAC 22:III.Chapter 47)

The following amendment is published in accordance with R.S. 40:2401 et al., Council on Peace Officer Standards and Training, which allows the POST Council to promulgate rules necessary to carry out its business or provisions of the Chapter. This Rule will expand the definition of a peace officer, set minimum standards for entry and in-service training, and provide criteria for the revocation of peace officer certification.

This Emergency Rule, effective September 28, 2017, is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part III. Commission on Law Enforcement and Administration of Criminal Justice

Subpart 4. Peace Officers

Chapter 47. Standards and Training

§4701. Definitions

A. The following terms, as used in these regulations, shall have the following meanings.

* * *

Peace Officer—any full-time, reserve, or part-time employee of the state, a municipality, a sheriff or other public agency, whose permanent duties actually include the making of arrests, the performing of searches and seizures, or the execution of detection of criminal warrants, and is responsible for the prevention or detection of crime or for the enforcement of the penal, traffic, highway laws of this state, but not including any elected or appointed head of a law enforcement department. *Peace officer* also includes those sheriff's deputies whose duties include the care, custody, and control of inmates, full-time police officers within the military department, State of Louisiana, and full-time security personnel employed by the Supreme Court of Louisiana.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice LR 25:662 (April 1999), amended LR 31:2007 (August 2005), LR 35:2755 (December 2009), LR 43:

§4703. Basic Certification

A. All peace officers, as defined in R.S. 40:2403, shall complete a basic training course as prescribed and certified by the Council on Peace Officers Standards and Training (POST Council) within one year of employment as a peace officer. Reserve or part-time officers hired prior to January 1, 2022 are “grandfathered” and exempt from the requirement of this Section. All reserves and part-timers

hired on or after January 1, 2022, must be certified. Military police officers stationed in Louisiana are eligible for certification if they successfully complete a basic training course prescribed for peace officers and pass the POST statewide examination. There are three levels of POST certification.

1. Level 1 Certification for Basic Law Enforcement Peace Officers

a. - b. ...

c. The POST basic training curriculum (utilizing the adult learning model) is required for any basic level 1 training class that begins at an accredited academy after July 1, 2018.

A.2. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:663 (April 1999), LR 27:49 (January 2001), LR 28:475 (March 2002), LR 31:2008 (August 2005), LR 35:1235 (July 2009), LR 36:992 (May 2010), LR 37:1606 (June 2011), LR 42:274 (February 2016), LR 43:

§4705. Registration

A. - C.2. ...

D. Registered officers who are “grandfathered in” are exempt from the basic training course requirement but must comply with all other POST mandates to maintain grandfathership including in service training.

E. - F.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:663 (April 1999), LR 31:3159 (December 2005), LR 37:319 (January 2011), LR 43:

§4709. Interruption of Full-Time Service

A. Any peace officer hired prior to January 1, 1986 who interrupts his full-time continuous law enforcement employment for a period in excess of five years (“break in service”) and is subsequently rehired full-time, shall be required to meet the basic training requirement for new peace officers unless the officer had:

1. - 2. ...

B. Any officer hired after January, 1986, who interrupts his full-time law enforcement service for a period not to exceed five years, must qualify with his/her firearms to reinstate their certification. If the officer fails to requalify, then the officer must attend a full 40-hour training course with firearms and successfully requalify to reinstate their certification. If the officer had interrupted his full-time service for a period of five years, and is thereafter rehired, then the officer must meet the requirement for “refreshers” outlined in §4709.A.2.

C. Extended medical leave does not constitute an interruption of full-time service/employment (“break in service”).

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April 1999), LR 31:3159 (December 2005), LR 34:1927 (September 2008), LR 37:319 (January 2011), LR 43:

§4715. Instructor Qualifications

A. Full-time academy instructors must meet the following qualifications:

1. - 2. ...

3. shall have completed the instructor development course conducted by the council.

4. ...

B. Specialized instructors for defensive tactics, firearms, and corrections shall meet the following qualification:

1. - 2. ...

3. shall successfully complete all aspects of adult learning model training (except for defensive tactics instructors);

B.4. - E.6. ...

F. POST Corrections Instructors

1.a. Eligibility for level 1 corrections instructors:

i. - ii. ...

iii. successfully complete the POST corrections instructors course.

b. ...

2.a. Eligibility for level 2 master corrections instructors:

i. the applicant shall be a POST corrections instructor at least two years; and

ii. ...

iii. successfully complete the POST master corrections instructor course.

b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 13:434 (August 1987), amended LR 25:664 (April 1999), LR 31:2008 (August 2005), LR 32:1043 (June 2006), LR 43:

§4717. POST Instructor Development Course

A. - B.1. ...

2. Repealed.

C. - D.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 30:793 (April 2004), amended LR 43:

§4731. Revocation of Certification

A. All law enforcement agencies and correctional agencies and institutions within the state of Louisiana shall immediately report the conviction of any POST certified full-time, reserve, or part-time or grandfathered peace officer to the council.

B. The POST certification of any qualified peace officer, whether employed full-time, part-time, or reserve, shall be revoked upon the occurrence of any of the following conditions:

1. a conviction of malfeasance in office;

2. a conviction of an offense which results in the individual peace officer's restriction of his constitutional right to bear arms.

C. The POST may conduct a revocation hearing to determine whether the certification of any qualified peace officer, whether employed full-time, part-time, or reserve, shall be revoked if the officer:

1. was involuntarily terminated by his employing law enforcement agency for disciplinary reasons involving civil

rights violations and the officer had exhausted all administrative remedies;

2. was convicted of a misdemeanor involving domestic abuse battery as provided in R.S. 14:35.3 or a felony in any court in the U.S.;

3. failed to complete additional training as required/prescribed by the council;

4. voluntarily surrenders his certification;

5. has a judicial disposition in a criminal case that results in revocation.

D. Any hearings conducted by the council or appeal by an officer are conducted by rules and regulations established by the council.

1. An officer subject to a revocation hearing shall be duly notified at least 30 days in advance of the hearing by the council.

2. The council may take testimony and evidence during the hearing, and make findings of fact and conclusions of law.

3. The council shall forward its decision via certified U.S. mail to the peace officer and the officer's employing agency.

E. Revocation hearings conducted by the POST can be conducted during a regularly scheduled meeting.

F. Any peace officer whose certification has been revoked may file an appeal of the decision with the council under the provisions of the Administrative Procedure Act under R.S. 49:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 25:665 (April 1999), amended LR 34:1927 (September 2008), LR 43:

§4750. In-Service Training and Certification

A. Firearms

1. - 1.b. ...

B. Minimum Training Hours

1. Each calendar year, all certified level 1 and 2 officers must successfully complete, at a minimum, the required 20 hours of in-service training hours to maintain certification, unless waived by the council. This requirement includes "grandfathered" peace officers. These training requirements begin the first calendar year after receiving certification or successful completion of "refresher" training.

2. The training hours must include, at a minimum:

a. legal (two hours);

b. firearms (eight hours);

c. officer survival (four hours);

e. electives (six hours).

C. Failure to Complete Training Requirements

1. If peace officer fails to complete the required number of training hours during a calendar year, the POST certification for the officer will be temporarily suspended. Once an officer's certification has been suspended, that officer shall be given 90 calendar days to correct his training deficiency, at which point the suspension shall be lifted. If an officer fails to correct his training deficiency within the 90-day probationary period, that officer's certification shall be revoked under provision of §4731.B. Training completed while an officer's certification is suspended shall not count toward that officer's training requirements for the current year. To reactivate the certification, the officer must attend

and successfully complete a “refresher” course as prescribed by the council.

2. Peace officers called to active military duty will not be required to complete in-service training requirements missed while performing the active duty service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR:37:1606 (June 2011), amended LR 43:316 (February 2017), LR 43:

§4761. Advanced Training

A. - B.1.c. ...

d. Vehicular homicide investigators are not required to complete this course.

2.a. - 3.a. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:1204 and R.S. 15:1207.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Commission on Law Enforcement and Administration of Criminal Justice, LR 42:274 (February 2016), amended LR 43:316 (February 2017), LR 43:

Jim Craft
Executive Director

1710#021

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Disproportionate Share Hospital Payments Major Medical Centers (LAC 50:V.2715)

The Department of Health, Bureau of Health Services Financing amends LAC 50:V.2715 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing disproportionate share hospital (DSH) payments in order to re-establish the provisions governing payments to public, non-rural community hospitals (*Louisiana Register*, Volume 40, Number 10). The Department of Health, Bureau of Health Services Financing promulgated an Emergency Rule which adopted provisions to establish a qualification criteria and DSH payment methodology for major medical centers located in the central and northern areas of Louisiana (*Louisiana Register*, Volume 42, Number 7).

In order to comply with the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services' (CMS) requirements and the associated approved Medicaid State Plan amendment, the department promulgated an Emergency Rule which amended the provisions of the June 30, 2016 Emergency Rule (*Louisiana Register*, Volume 43, Number 2).

This Emergency Rule is being promulgated in order to continue the provisions of the February 20, 2017 Emergency Rule. This action is being taken to promote the public health and welfare of uninsured individuals, and ensure their continued access to health services by assuring that hospitals are adequately reimbursed for furnishing uncompensated care.

Effective October 20, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing DSH payments to major medical centers located in the central and northern areas of the state.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 3. Disproportionate Share Hospital Payments

Chapter 27. Qualifying Hospitals

§2715. Major Medical Centers Located in Central and Northern Areas of the State

A. Effective for dates of service on or after June 30, 2016, hospitals qualifying for payments as major medical centers located in the central and northern areas of the state shall meet the following criteria:

1. be a private, non-rural hospital located in Department of Health administrative regions 6, 7, or 8;

2. have at least 200 inpatient beds as reported on the Medicare/Medicaid cost report, Worksheet S-3, column 2, lines 1-18, for the state fiscal year ending June 30, 2015. For qualification purposes, inpatient beds shall exclude nursery and Medicare designated distinct part psychiatric unit beds;

3. does not qualify as a Louisiana low-income academic hospital under the provisions of §3101; and

4. such qualifying hospital (or its affiliate) does have a memorandum of understanding executed on or after June 30, 2016 with Louisiana State University-School of Medicine, the purpose of which is to maintain and improve access to quality care for Medicaid patients in connection with the expansion of Medicaid in the state through the promotion, expansion, and support of graduate medical education and training.

B. Payment Methodology. Effective for dates of service on or after June 30, 2016, each qualifying hospital shall be paid a DSH adjustment payment which is the pro rata amount calculated by dividing their hospital specific allowable uncompensated care costs by the total allowable uncompensated care costs for all hospitals qualifying under this category and multiplying by the funding appropriated by the Louisiana Legislature in the applicable state fiscal year for this category of hospitals.

1. Costs, patient-specific data and documentation that qualifying criteria is met shall be submitted in a format specified by the department.

2. Costs and lengths of stay shall be reviewed by the department for reasonableness before payments are made.

3. Aggregate DSH payments for hospitals that receive payment from this category, and any other DSH category, shall not exceed the hospital's specific DSH limit. If payments calculated under this methodology would cause a hospital's aggregate DSH payment to exceed the limit, the payment from this category shall be capped at the hospital's specific DSH limit.

4. A pro rata decrease, necessitated by conditions specified in §2501.B.1 above for hospitals described in this Section, will be calculated based on the ratio determined by dividing the hospital's uncompensated costs by the uncompensated costs for all of the qualifying hospitals described in this Section, then multiplying by the amount of disproportionate share payments calculated in excess of the federal DSH allotment.

a. Additional payments shall only be made after finalization of the Centers for Medicare and Medicaid Services' (CMS) mandated DSH audit for the state fiscal year. Payments shall be limited to the aggregate amount recouped from the qualifying hospitals described in this Section, based on these reported audit results. If the hospitals' aggregate amount of underpayments reported per the audit results exceeds the aggregate amount overpaid, the payment redistribution to underpaid hospitals shall be paid on a pro rata basis calculated using each hospital's amount underpaid, divided by the sum of underpayments for all of the hospitals described in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to all inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1710#049

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Facility Need Review Behavioral Health Services Providers (LAC 48:I.Chapter 125)

The Department of Health, Bureau of Health Services Financing amends LAC 48:I.Chapter 125 as authorized by R.S. 36:254 and R.S. 40:2116. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing amended the provisions governing the Facility Need Review (FNR) Program in order to provide exceptions pertaining to the expiration of facility need review approvals for beds that are de-licensed and decertified when facilities undergo major alterations (*Louisiana Register*, Volume 43, Number 8).

The department now proposes to amend the provisions governing the FNR Program in order to: 1) adopt provisions for FNR approval for behavioral health services (BHS)

providers that apply for licensure to provide psychosocial rehabilitation and/or community psychiatric support and treatment services; and 2) provide grandfather provisions for BHS providers who are licensed as of October 16, 2017, or have submitted an application for licensure prior to October 16, 2017.

This action is being taken to promote the health and welfare of Medicaid recipients by ensuring sufficient provider participation in the FNR Program. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2017-2018.

Effective October 16, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing the Facility Need Review Program.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 5. Health Planning

Chapter 125. Facility Need Review

Subchapter A. General Provisions

§12501. Definitions

A. Definitions. When used in this Chapter the following terms and phrases shall have the following meanings unless the context requires otherwise.

* * *

Behavioral Health Services (BHS)—mental health services, substance abuse/addiction treatment services, or combination of such services, for adults, adolescents and children.

Behavioral Health Services Provider—a facility, agency, institution, person, society, corporation, partnership, unincorporated association, group, or other legal entity that provides behavioral health services or, presents itself to the public as a provider of behavioral health services.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:806 (August 1995), amended LR 25:1250 (July 1999), LR 28:2190 (October 2002), LR 30:1023 (May 2004), LR 32:845 (May 2006), LR 34:2611 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1961 (August 2012), LR 41:135 (January 2015), LR 41:2636 (December 2015), LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

§12503. General Information

A. - B. ...

C. The department will also conduct an FNR for the following provider types to determine if there is a need to license additional units, providers or facilities:

1. - 3. ...

4. hospice providers or inpatient hospice facilities;

5. pediatric day health care facilities; and

6. behavioral health services (BHS) providers that provide psychosocial rehabilitation (PSR) and/or community psychiatric support and treatment (CPST) services.

D. - F.4. ...

G. Additional Grandfather Provision. An approval shall be deemed to have been granted under FNR without review for HCBS providers, ICFs/DD, ADHC providers, hospice

providers, BHS providers, and pediatric day health care centers that meet one of the following conditions:

1. ...
2. existing licensed ICFs-DD that are converting to the Residential Options Waiver;
3. - 5.c. ...
- d. became licensed as a PDHC by the department no later than December 31, 2014; and
6. behavioral health services (BHS) providers that are licensed as of October 16, 2017 to provide PSR and/or CPST, or that have submitted an application for licensure as a BHS provider that includes PSR and/or CPST prior to October 16, 2017;
7. behavioral health services (BHS) providers that fall within the provisions of Act 33 of the 2017 Regular Session of the Louisiana Legislature, commonly referred to as accredited mental health rehabilitation providers, that submit a completed BHS provider licensing application by December 1, 2017 and become licensed by April 1, 2018.

H. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 21:808 (August 1995), amended LR 28:2190 (October 2002), LR 30:1483 (July 2004), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 34:2612 (December 2008), amended LR 35:2437 (November 2009), LR 36:323 (February 2010), LR 38:1593 (July 2012), LR 38:1961 (August 2012), LR 41:136 (January 2015), LR 42:61 (January 2016), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Subchapter B. Determination of Bed, Unit, Facility or Agency Need

§12524. Behavioral Health Services Providers

A. Except as noted in Paragraph B below, beginning October 16, 2017, no behavioral health services (BHS) providers or applicants seeking to provide psychosocial rehabilitation (PSR) and/or community psychiatric support and treatment (CPST) services shall be eligible to apply for licensure to provide PSR and/or CPST services unless the FNR Program has granted an approval for the issuance of a BHS provider license for such services. Once the FNR Program approval is granted, a BHS provider is eligible to apply for a BHS provider license to provide PSR and/or CPST services.

B. BHS providers who fall within the provisions of Act 33 of the 2017 Regular Session of the Louisiana Legislature, commonly referred to as accredited mental health rehabilitation providers, are required to submit a BHS provider licensing application by December 1, 2017 and become licensed by April 1, 2018.

1. Beginning December 2, 2017, such an "Act 33" BHS provider that failed to submit its completed licensing application by December 1, 2017, shall be subject to FNR and shall not be eligible to apply for licensure to provide PSR and/or CPST services unless the FNR Program has granted an approval for the issuance of a BHS provider license for such services. Once the FNR Program approval is granted, such a BHS provider is eligible to apply for a BHS provider license to provide PSR and/or CPST services.

2. Beginning April 2, 2018, such an "Act 33" BHS provider that submitted its completed licensing application

by December 1, 2017, but failed to become licensed by April 1, 2018, shall be subject to FNR and shall not be eligible to apply for licensure to provide PSR and/or CPST services unless the FNR Program has granted an approval for the issuance of a BHS provider license for such services. Once the FNR Program approval is granted, such a BHS provider is eligible to apply for a BHS provider license to provide PSR and/or CPST services.

C. The service area for proposed or existing BHS providers shall be the parish in which the provider is licensed and parishes directly adjacent to said parish.

D. Determination of Need/Approval

1. The department shall review the FNR application to determine if there is a need for an additional BHS provider to provide PSR and/or CPST services in the service area.

2. The department shall grant FNR approval only if the FNR application, the data contained in the application and other evidence effectively establishes the probability of serious, adverse consequences to recipients' ability to access behavioral health PSR and/or CPST services if the provider is not allowed to be licensed.

3. In reviewing the application, the department may consider, but is not limited to, evidence showing:

a. the number of other BHS providers providing PSR and/or CPST services in the same geographic location and service area servicing the same population; and

b. allegations involving issues of access to behavioral health PSR and/or CPST services.

4. The burden is on the applicant to provide data and evidence to effectively establish the probability of serious, adverse consequences to recipients' ability to access behavioral health PSR and/or CPST services if the provider is not granted approval to be licensed. The department shall not grant any FNR approvals if the application fails to provide such data and evidence.

E. Applications for approvals of BHS providers of PSR and/or CPST services submitted under these provisions are bound to the description in the application with regard to the type of services proposed, as well as to the site and location as defined in the application. FNR approval of such providers shall expire if these aspects of the application are altered or changed.

F. Facility need review approvals for behavioral health PSR and/or CPST applicants are non-transferrable and are limited to the location and the name of the original licensee.

1. A BHS provider of PSR and/or CPST services undergoing a change of location in the same licensed region shall submit a written attestation of the change of location and the department shall re-issue the FNR approval with the name and new location. A BHS provider undergoing a change of location outside of the licensed region shall submit a new completed FNR application and required fee and undergo the FNR approval process.

2. A BHS provider of PSR and/or CPST services undergoing a change of ownership shall submit a new completed application and required fee to the department's FNR Program. FNR approval for the new owner shall be granted upon submission of the new application and proof of the change of ownership, which shall show the seller's or transferor's intent to relinquish the FNR approval.

3. Facility need review approval of a licensed BHS provider of PSR and/or CPST services shall automatically

expire if the provider is moved or transferred to another party, entity or location without application to and approval by the FNR program.

4. Facility need review approved BHS providers of PSR and/or CPST shall become licensed no later than one year from the date of the FNR approval. Failure to meet any of the time frames in this section shall result in an automatic expiration of the FNR approval of the BHSP provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2116.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 44:

Public Comments

Interested persons may submit written comments to Cecile Castello, Health Standards Section, P.O. Box 3767, Baton Rouge, LA 70821 or by email to MedicaidPolicy@la.gov. Ms. Castello is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1710#046

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Inpatient Hospital Services
Office of Public Health Newborn Screening Payments
(LAC 50:V.115)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:V.115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing provides reimbursement through the Medical Assistance Program to the Office of Public Health (OPH) for laboratory services rendered in an acute care inpatient hospital setting in compliance with the requirements of Act 840 of the 1997 Regular Session of the Louisiana Legislature.

The department promulgated an Emergency Rule which amended the provisions governing inpatient hospital services in order to establish Medicaid reimbursement to OPH for newborn screenings provided in an acute care inpatient hospital setting, and to ensure that these provisions are promulgated in a clear and concise manner in the *Louisiana Administrative Code (Louisiana Register, Volume 43, Number 8)*. The department has now determined that it is necessary to amend the provisions of the August 5, 2017 Emergency Rule in order to clarify the legislatively-mandated requirements for OPH newborn screenings governed by these provisions. This action is being taken to

promote the health and welfare of Medicaid recipients by ensuring continued access to inpatient hospital services.

Effective October 20, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions of the August 5, 2017 Emergency Rule governing inpatient hospital services to establish reimbursement to OPH for legislatively mandated newborn screenings provided in an acute care inpatient hospital setting.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals Services

Chapter 1. General Provisions

§115. Office of Public Health Newborn Screenings

A. The Department of Health, Bureau of Health Services Financing shall provide reimbursement to the Office of Public Health (OPH) through the Medical Assistance Program for newborn screenings performed by OPH on specimens taken from children in acute care hospital settings.

B. Reimbursement

1. Effective for dates of service on or after August 5, 2017, claims submitted by OPH to the Medicaid Program for the provision of legislatively-mandated inpatient hospital newborn screenings shall be reimbursed outside of the acute hospital per diem rate for the inpatient stay.

a. The hospital shall not include any costs related to newborn screening services provided and billed by OPH in its Medicaid cost report(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1710#047

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Intermediate Care Facilities for Persons with
Intellectual Disabilities—Public Facilities
Transitional Rate Extension (LAC 50:VII.32969)

The Department of Health, Bureau of Health Services Financing amends LAC 50:VII.32969 in the Medical Assistance Program as authorized by R.S. 36:254 and

pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities (ICFs/DD), hereafter referred to as intermediate care facilities for persons with intellectual disabilities (ICFs/ID), to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 40, Number 12).

The department now proposes to amend the provisions governing reimbursement for public facilities in order to extend the period of transitional rates for large facilities that provide continuous nursing coverage to medically fragile populations for an additional year. This action is being taken to protect the public health and welfare of Medicaid recipients transitioning from public ICFs/ID by ensuring continued provider participation in the Medicaid Program. It is estimated that implementation of this Emergency Rule will have no programmatic costs for state fiscal year 2017-2018.

Effective October 1, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for public intermediate care facilities for persons with intellectual disabilities.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32969. Transitional Rates for Public Facilities

A. - B. ...

1. The department may extend the period of transition for an additional year, if deemed necessary, for an active CEA facility that is:

- a. a large facility of 100 beds or more;
- b. serves a medically fragile population; and
- c. provides continuous (24-hour) nursing coverage.

C. - F.4. ...

G. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:326 (February 2013), amended LR 40:2588 (December 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to

MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1710#014

DECLARATION OF EMERGENCY

Department of Health Bureau of Health Services Financing

Laboratory and Radiology Services
Termination of Coverage for
Proton Beam Radiation Therapy
(LAC 50:XIX.4334)

The Department of Health, Bureau of Health Services Financing amends LAC 50:XIX.4334 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act, or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing currently provides Medicaid coverage and reimbursement for proton beam radiation therapy services under the laboratory and radiology benefit. Proton beam radiation is a type of external radiation therapy utilized in the treatment of malignant and benign tumors and arteriovenous malformations. National best practice standards indicate that the therapy is most appropriate for treatment of tumors in individuals who are under the age of 21.

As the Medicaid Program continues to look for cost containment measures to ensure fiscal responsibility, we also strive to ensure Medicaid recipients receive the most appropriate, quality services. Therefore, it is imperative that our coverage policies align with best practice standards which is a fiscally sound approach to health care service delivery.

Hence, the department proposes to amend the provisions governing laboratory and radiology services to terminate coverage and reimbursement of proton beam radiation therapy for recipients 21 years of age and older. The services will continue to be available for recipients under the age of 21 when deemed medically necessary.

This action is being taken to avoid a budget deficit in the Medical Assistance Program, and to align the department's coverage policies with national best practice standards. It is estimated that implementation of this Emergency Rule will reduce expenditures in the Medicaid Program by approximately \$32,647 for state fiscal year 2017-18.

Effective September 21, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing laboratory and radiology services to terminate coverage and reimbursement for proton beam radiation therapy rendered to recipients 21 years of age and older.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XIX. Other Healthcare Services
Subpart 3. Laboratory and Radiology Services
Chapter 43. Billing and Reimbursement
Subchapter B. Reimbursement
§4334. Radiology Services

A. - K.3. ...

L. Effective for dates of service on or after September 21, 2017, the Medicaid Program terminates coverage and reimbursement for proton beam radiation therapy (PBRT) for recipients 21 years of age and older.

1. For recipients under the age of 21, coverage and reimbursement shall be provided when PBRT services are deemed medically necessary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 30:1026 (May 2004), amended LR 35:1898 (September 2009), amended LR 36:1248 (June 2010), LR 36:2563 (November 2010), LR 37:3029 (October 2011), LR 39:1284 (May 2013), LR 41:540 (March 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1710#003

DECLARATION OF EMERGENCY

Department of Health
Bureau of Health Services Financing

Laboratory and Radiology Services—Termination of
Coverage for Proton Beam Radiation Therapy
(LAC 50:XIX.4334)

The Department of Health, Bureau of Health Services Financing rescinds the September 21, 2017 Emergency Rule governing laboratory and radiology services as authorized by R.S. 36:254. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing adopted an Emergency Rule which amended the provisions governing laboratory and radiology services to terminate coverage and reimbursement of proton beam radiation therapy for recipients 21 years of age and older (*Louisiana Register*, Volume 43, Number 10).

The department has now determined that it is necessary to rescind the provisions of the September 21, 2017 Emergency Rule governing laboratory and radiology services which terminated coverage and reimbursement of proton beam radiation therapy for recipients 21 years of age and older. Effective immediately, upon adoption of this Emergency Rule, the department shall return to the provisions in place governing coverage of proton beam therapy under laboratory and radiology services in LAC 50:XIX.4334. This action is being promulgated in order to promote the health and welfare of Medicaid recipients in Louisiana by ensuring continued access to laboratory and radiation services for recipients 21 and over.

Effective October 7, 2017, the Department of Health, Bureau of Health Services Financing rescinds the September 21, 2017 Emergency Rule terminating coverage and reimbursement of proton beam radiation therapy for recipients 21 years of age and older which will be published in the October 20, 2017 edition of the *Louisiana Register*.

Rebekah E. Gee MD, MPH
Secretary

1710#022

DECLARATION OF EMERGENCY

Department of Health
Bureau of Health Services Financing

Nursing Facilities
Reimbursement Methodology
(LAC 50:II.20001)

The Department of Health, Bureau of Health Services Financing amends LAC 50:II.20001 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953 (B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Department of Health, Bureau of Health Services Financing provides reimbursement to nursing facilities, through vendor payments, for services rendered to Medicaid eligible individuals who reside in nursing facilities.

As a result of a budgetary shortfall in state fiscal year (SFY) 2017-2018, the department promulgated an Emergency Rule which amended the provisions governing the reimbursement methodology for nursing facilities in order to suspend the provisions of LAC 50:II.Chapter 200 and to impose provisions to ensure that the current rates in effect do not increase for the SFY 2018 rating period (*Louisiana Register*, Volume 43, Number 7). This Emergency Rule is being promulgated to continue the provisions of the July 1, 2017 Emergency Rule. This action is being taken to avoid a budget deficit in the Medical Assistance Program.

Effective October 30, 2017, the Department of Health, Bureau of Health Services Financing amends the provisions governing the reimbursement methodology for nursing facilities.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part II. Nursing Facilities
Subpart 5. Reimbursement

Chapter 200. Reimbursement Methodology
§20001. General Provisions

A. - B.7. ...

C. Effective for the rate period of July 1, 2017 through June 30, 2018, the department shall suspend the provisions of LAC 50:II.Chapter 200 governing the reimbursement methodology for nursing facilities and impose the following provisions governing reimbursements for nursing facility services.

1. During this time period, no inflation factor will be applied to the base resident day weighted medians and prices calculated as of July 1, 2016.

2. All costs and cost components that are required by Rule to be trended forward will only be trended forward to the midpoint of the 2017 state fiscal year (December 31, 2016).

3. The base capital per square foot value, land value per square foot, and per licensed bed equipment value utilized in the calculation of the fair rental value (FRV) component will be set equal to the value of these items as of July 1, 2016.

4. Base capital values for the Bed Buy-Back Program (LAC 50:II.20012) purposes will be set equal to the value of these items as of July 1, 2016.

5. Nursing facility providers will not have their weighted age totals for the FRV component calculation purposes increased by one year as of July 1, 2017.

6. As of the July 1, 2018 rate setting, nursing facility provider weighted age totals for the FRV component calculation purposes will be increased by two years to account for the suspended year of aging occurring as of the July 1, 2017 rate period.

7. No other provisions of LAC 50:II.Chapter 200 shall be suspended for this time period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 46:2742, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 28:1473 (June 2002), repromulgated LR 28:1790 (August 2002), amended LR 28:2537 (December 2002), LR 32:2262 (December 2006), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:825 (March 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 42:1522 (September 2016), LR 43:525 (March 2017), LR 43:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for

responding to inquiries regarding this Emergency Rule. A copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1710#050

DECLARATION OF EMERGENCY

Department of Health
Bureau of Health Services Financing

Recovery Audit Contractor Program
(LAC 50:I.Chapter 85)

The Department of Health, Bureau of Health Services Financing adopts LAC 50:I.Chapter 85 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Emergency Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(B)(1) et seq., and shall be in effect for the maximum period allowed under the Act or until adoption of the final Rule, whichever occurs first.

The Patient Protection and Affordable Care Act (PPACA), U.S. Public Law 111-148, and 111-152 directed states to establish a Recovery Audit Contractor (RAC) program to audit payments to Medicaid providers. Act 568 of the 2014 Regular Session of the Louisiana Legislature directed the Department of Health and Hospitals to implement a recovery audit contractor program. In compliance with the Patient Protection and Affordable Care Act (PPACA) and Act 568, the department promulgated an Emergency Rule which adopted provisions to establish the RAC program (*Louisiana Register*, Volume 40, Number 11). This Emergency Rule is being promulgated to continue the provisions of the November 20, 2014 Emergency Rule. This action is being taken to avoid federal sanctions.

Effective November 13, 2017, the Department of Health, Bureau of Health Services Financing adopts provisions establishing the Recovery Audit Contractor program.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part I. Administration
Subpart 9. Recovery

Chapter 85. Recovery Audit Contractor
§8501. General Provisions

A. Pursuant to the provisions of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148, 111-152, and Act 562 of the Regular Session of the Louisiana Legislature, the Medicaid Program adopts provisions to establish a recovery audit contractor (RAC) program.

B. These provisions do not prohibit or restrict any other audit functions that may be performed by the department or its contractors. This Rule shall only apply to Medicaid RACs as they are defined in applicable federal law.

C. This Rule shall apply to RAC audits that begin on or after November 20, 2014, regardless of dates of claims reviewed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

§8503. Definitions

Adverse Determination—any decision rendered by the recovery audit contractor that results in a payment to a provider for a claim or service being reduced either partially or completely.

Department—Department of Health (LDH) or any of its sections, bureaus, offices, or its contracted designee.

Provider—any healthcare entity enrolled with the department as a provider in the Medicaid program.

Recovery Audit Contractor (RAC)—a Medicaid recovery audit contractor selected by the department to perform audits for the purpose of ensuring Medicaid program integrity in accordance with the provisions of 42 CFR 455 et seq.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

§8505. Contractor Functions

A. Notwithstanding any law to the contrary, the RAC shall perform all of the following functions.

1. The RAC shall ensure it is reviewing claims within three years of the date of its initial payment. For purposes of this requirement, the three-year look-back period shall commence from the beginning date of the relevant audit.

2. The RAC shall send a determination letter concluding an audit within 60 days of receipt of all requested materials from a provider.

3. For any records which are requested from a provider, the RAC shall ensure proper identification of which records it is seeking. Information shall include, but is not limited to:

- a. recipient name;
- b. claim number;
- c. medical record number (if known); and
- d. date(s) of service.

B. Pursuant to applicable statute, the RAC program's scope of review shall exclude the following:

1. all claims processed or paid within 90 days of implementation of any Medicaid managed care program that relates to said claims. This shall not preclude review of claims not related to any Medicaid managed care program implementation;

2. claims processed or paid through a capitated Medicaid managed care program. This scope restriction shall not prohibit any audits of per member per month payments from the department to any capitated Medicaid managed care plan utilizing such claims; and

3. medical necessity reviews in which the provider has obtained prior authorization for the service.

C. The RAC shall refer claims it suspects to be fraudulent directly to the department for investigation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

§8507. Reimbursement and Recoupment

A. The department has in place, and shall retain, a process to ensure that providers receive or retain the appropriate reimbursement amount for claims within any look-back period in which the RAC determines that services delivered have been improperly billed, but reasonable and necessary. It shall be the provider's responsibility to provide documentation to support and justify any recalculation.

B. The RAC and the department shall not recoup any overpayments identified by the RAC until all informal and formal appeals processes have been completed. For purposes of this Section, a final decision by the Division of Administrative Law shall be the conclusion of all formal appeals processes. This does not prohibit the provider from seeking judicial review and any remedies afforded thereunder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

§8509. Provider Notification

A. The RAC shall provide a detailed explanation in writing to a provider for any adverse determination as defined by state statute. This notification shall include, but not be limited to the following:

1. the reason(s) for the adverse determination;
2. the specific medical criteria on which the determination was based, if applicable;
3. an explanation of any provider appeal rights; and
4. an explanation of the appropriate reimbursement determined in accordance with §8507, if applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

§8511. Records Requests

A. The RAC shall limit records requests to not more than 1 percent of the number of claims filed by the provider for the specific service being reviewed in the previous state fiscal year during a 90-day period. The 1 percent shall be further limited to 200 records. For purposes of this Chapter, each specific service identified for review within the requested time-period will be considered a separate and distinct audit.

B. The provider shall have 45 calendar days to comply with any records request unless an extension is mutually agreed upon. The 45 days shall begin on the date of receipt of any request.

1. *Date of Receipt*—two business days from the date of the request as confirmed by the post office date stamp.

C. If the RAC demonstrates a significant provider error rate relative to an audit of records, the RAC may make a request to the department to initiate an additional records request relative to the issue being reviewed for the purposes of further review and validation.

1. The provider shall be given an opportunity to provide written objections to the secretary or his/her designee of any subsequent records request. Decisions by the secretary or his/her designee in this area are final and not subject to further appeal or review.

2. This shall not be an adverse determination subject to the Administrative Procedure Act process.

3. A significant provider error rate shall be defined as 25 percent.

4. The RAC shall not make any requests allowed above until the time-period for the informal appeals process has expired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

§8513. Audits and Records Submission

A. The RAC shall utilize provider self-audits only if mutually agreed to by the provider and the RAC.

B. If the provider is determined to be a low-risk provider, the RAC shall schedule any on-site audits with advance notice of not less than 10 business days. The RAC shall make a reasonable good-faith effort to establish a mutually agreed-upon date and time, and shall document such efforts.

C. In association with an audit, providers shall be allowed to submit records in electronic format for their convenience. If the RAC requires a provider to produce records in any non-electronic format, the RAC shall make reasonable efforts to reimburse the provider for the reasonable cost of medical records reproduction consistent with 42 CFR 476.78.

1. The cost for medical record production shall be at the current federal rate at the time of reimbursement to the provider. This rate may be updated periodically, but in no circumstance shall it exceed the rate applicable under Louisiana statutes for public records requests.

2. Any costs associated with medical record production may be applied by the RAC as a credit against any overpayment or as a reduction against any underpayment. A tender of this amount shall be deemed a reasonable effort.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

§8515. Appeals Process

A. A provider shall have a right to an informal and formal appeals process for adverse determinations made by the RAC.

B. The informal appeals process shall be conducted as follows.

1. Beginning on the date of issuance of any initial findings letter by the RAC, there shall be an informal discussion and consultation period. During this period the provider and RAC may communicate regarding any audit determinations.

2. Within 45 calendar days of receipt of written notification of an adverse determination from the RAC, a provider shall have the right to request an informal hearing relative to such determination. The department's Program Integrity Section shall be involved in this hearing. Any such request shall be in writing and the date of receipt shall be deemed to be two days after the date of the adverse determination letter.

3. The informal hearing shall occur within 30 days of receipt of the provider's request.

4. At the informal hearing the provider shall have the right to present information orally and in writing, the right to present documents, and the right to have the department and the RAC address any inquiry the provider may make concerning the reason for the adverse determination. A provider may be represented by an attorney or authorized representative, but any such individual must provide written notice of representation along with the request for informal hearing.

5. The RAC and the Program Integrity Section shall issue a final written decision related to the informal hearing within 15 calendar days of the hearing closure.

C. Within 30 days of issuance of an adverse determination of the RAC, if an informal hearing is not requested or there is a determination pursuant to an informal hearing, a provider may request an administrative appeal of the final decision by requesting a hearing before the Division of Administrative Law. A copy of any request for an administrative appeal shall be filed contemporaneously with the Program Integrity Section. The date of issuance of a final decision or determination pursuant to an informal hearing shall be two days from the date of such decision or determination.

D. The department shall report on its website the number of adverse determinations overturned on informal or formal appeals at the end of the month for the previous month.

E. If the department or the Division of Administrative Law hearing officer finds that the RAC determination was unreasonable, frivolous or without merit, then the RAC shall reimburse the provider for its reasonable costs associated with the appeals process. Reasonable costs include, but are not limited to, cost of reasonable attorney's costs and other reasonable expenses incurred to appeal the RAC's determination. The fact that a decision has been overturned or partially overturned via the appeals process shall not mean the determination was without merit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

§8517. Penalties and Sanctions

A. If the department determines that the RAC inappropriately denied a claim(s), the department may impose a penalty or sanction. A claim has been inappropriately denied when the:

1. adverse determination is not substantiated by applicable department policy or guidance and the RAC fails to utilize guidance provided by the department; or

2. RAC fails to follow any programmatic or statutory rules.

B. If more than 25 percent of the RAC's adverse determinations are overturned on informal or formal appeal, the department may impose a monetary penalty up to 10 percent of the cost of the claims to be awarded to the providers of the claims inappropriately determined, or a monetary penalty up to 5 percent of the RAC's total collections to the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to all inquiries regarding this Emergency Rule. A

copy of this Emergency Rule is available for review by interested parties at parish Medicaid offices.

Rebekah E. Gee MD, MPH
Secretary

1710#051

Rules

RULE

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Agricultural Chemistry and Seed Commission

Seeds

(LAC 7:XIII.109, 121, 131, 141, 143 and 763)

In accordance with the Administrative Procedure Act, R.S. 49:950, et seq., the Department of Agriculture and Forestry and the Agricultural Chemistry and Seed Commission has amended the following regulations related to seeds: LAC 7:XIII.109, 121, 131, 141, 143 and 763. The changes to §109 clarify that a tolerance will not be applied for samples tested that contain prohibited noxious weeds; reduces the limitations for specific noxious weeds based on limitations currently listed on the federal noxious weed seed list and recognized by several other states; and corrects the spelling and updates the scientific names of specific noxious weed species. The changes to §121 clarify that Louisiana can perform seed testing and reporting procedures to meet Canadian and International Seed Testing Association (ISTA) testing and reporting requirements and excludes certain AK and HI noxious weed seeds, Orbanche spp., Phelipanche spp., and Striga spp. from the noxious weed exam, and list and define the bulk exam and the fee based on an hourly fee and the complexity of the requested exam. The changes to §131 permit the abbreviation of the terms “annual” and “perennial” in annual and perennial ryegrass, replace the term “inclusive” with term “exclusive” for the nine month maximum germination test date requirement and further define the correct use of germination relabeling stickers as required in the Louisiana Seed Law. The rule changes to §141 clarify that the “hard seed” percentage contained within vegetable seed, known to contain hard seed, will be added to the germination percentage. The amendment to this Section also deletes the existing vegetable kind table, replaces it with the current table published by the USDA Seed Regulatory and Testing Division and adopts the minimum 50 percent germination standard for vegetable and garden seeds that are not listed in the vegetable kinds table. The changes to §143 reduce the maximum total weed seed content from two and one-half percent to one percent. The changes to §763 remove “eastern” from “eastern black nightshade” in the field standards in order to include all species of black nightshade as noxious weeds in certified sugarcane.

Title 7

AGRICULTURE AND ANIMALS

Part XIII. Seeds

Chapter 1. General Provisions

Subchapter A. Definitions, Administrative Matters

§109. List of Noxious Weeds and Limitations on Noxious Weed Seed

A. The weeds listed in the following table are designated as noxious weeds. The seed of any noxious weed is

permitted to be in seed sold, distributed, or offered or handled for sale only as provided in the limitation column of the table, except as otherwise provided in Subsection B. There is no tolerance applied to noxious weeds listed as prohibited.

List of Noxious Weeds and Seed Limitations	
Name	Limitations
1. Balloon Vine (<i>Cardiospermum halicacabum</i>)	Prohibited
2. Field Bindweed (<i>Convolvulus arvensis</i>)	Prohibited
3. Hedge Bindweed (<i>Calystegia sepium</i>)	Prohibited
4. Itchgrass (<i>Rottboellia cochinchinensis</i>)	Prohibited
5. Yellow Nutsedge (<i>Cyperus esculentus</i>)	Prohibited
6. Purple Nutsedge (<i>Cyperus rotundus</i>)	Prohibited
7. Tropical Soda Apple (<i>Solanum viarum</i>)	Prohibited
8. Cocklebur (<i>Xanthium</i> spp.)	5 per lb.
9. Spearhead; Beaksedge (<i>Rhynchospora</i> spp.)	5 per lb.
10. Purple Moonflower (<i>Ipomoea turbinata</i>)	9 per lb.
11. Red Rice (<i>Oryza sativa</i>)	9 per lb.
12. Wild Onion and/or Wild Garlic (<i>Allium</i> spp.)	9 per lb.
13. Morning Glory (<i>Ipomoea</i> spp.)	18 per lb.
14. Wild Poinsettia (<i>Euphorbia davidii</i>)	18 per lb.
15. Canada Thistle (<i>Cirsium arvense</i>)	100 per lb.
16. Dock (<i>Rumex</i> spp.)	100 per lb.
17. Dodder (<i>Cuscuta</i> spp.)	100 per lb.
18. Horsenettle (<i>Solanum carolinense</i>)	100 per lb.
19. Johnsongrass (<i>Sorghum halepense</i>)	100 per lb.
20. Quackgrass (<i>Elymus repens</i>)	100 per lb.
21. Russian Knapweed (<i>Rhaponticum repens</i>)	100 per lb.
22. Sheep Sorrel (<i>Rumex acetosella</i>)	100 per lb.
23. Silverleaf Nightshade (<i>Solanum elaeagnifolium</i>)	100 per lb.
24. Wild Mustard and Wild Turnips (<i>Brassica</i> spp. and <i>Sinapis</i> spp.)	100 per lb.
25. Blueweed, Texas (<i>Helianthus ciliaris</i>)	200 per lb.
26. Bermudagrass (<i>Cynodon dactylon</i>)	300 per lb.
27. Buckhorn Plantain (<i>Plantago lanceolata</i>)	300 per lb.
28. Cheat (<i>Bromus secalinus</i>)	300 per lb.
29. Corncockle (<i>Agrostemma githago</i>)	300 per lb.
30. Darnel; Poison Ryegrass (<i>Lolium temulentum</i>)	300 per lb.
31. Hairy Chess (<i>Bromus commutatus</i>)	300 per lb.
32. Hemp Sesbania, Coffeebean, Tall Indigo (<i>Sesbania exaltata</i>)	300 per lb.
33. Indian Jointvetch (<i>Aeschynomene indica</i>)	300 per lb.
34. Mexicanweed (<i>Caperonia castaneifolia</i>)	300 per lb.
Sum of Total Noxious Weed	500 per lb.
(Subject to limitations above)	

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1431 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended LR 5:96 (May 1979), LR 7:285 (June 1981), LR 8:563 (November 1982), LR 9:197, 206 (April 1983), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 14:605 (September 1988), LR 23:1282 (October 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Seed Commission, LR 30:199 (February 2004), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2704 (October 2013), amended LR 40:744 (April 2014), LR 43:1895 (October 2017).

Subchapter B. Fees

§121. License Fee; Laboratory and Sampling Fees (Formerly §113)

A. ...

B. Laboratory and Sampling Fees. The following laboratory and sampling fees shall be applicable to all seed testing conducted by LDAF.

1. Purity and Germination Examinations Using Association of Official Seed Analysts (AOSA), Canadian, International Seed Testing Association (ISTA) or Federal Seed Act (FSA) Testing Procedures

Seed Kind (1,2)	Purity (3,4)	Germination (4)	Tetrazolium Viability	Seed kind (1,2)	Purity (3,4)	Germination (4)	Tetrazolium Viability
Alfalfa	\$10.00	\$10.00	\$25.00	Leek	\$10.00	\$10.00	\$25.00
Arugula	\$10.00	\$10.00	\$25.00	Lespedeza	\$10.00	\$10.00	\$25.00
Asparagus	\$10.00	\$10.00	\$25.00	Lettuce	\$10.00	\$10.00	\$25.00
Bahiagrass	\$20.00	\$20.00	\$25.00	Melon	\$10.00	\$10.00	\$25.00
Basil, Sweet	\$10.00	\$10.00	\$25.00	Millet	\$10.00	\$10.00	\$25.00
Bean	\$10.00	\$10.00	\$25.00	Mustard	\$10.00	\$10.00	\$25.00
Beet	\$10.00	\$10.00	\$25.00	Oats	\$10.00	\$10.00	\$25.00
Bentgrass	\$20.00	\$20.00	\$25.00	Onion	\$10.00	\$10.00	\$25.00
Bermudagrass	\$20.00	\$20.00	\$25.00	Orchardgrass	\$20.00	\$20.00	\$25.00
Bluegrass	\$20.00	\$20.00	\$25.00	Pak-choi	\$10.00	\$10.00	\$25.00
Broccoli	\$10.00	\$10.00	\$25.00	Parsley	\$10.00	\$10.00	\$25.00
Brussels Sprouts	\$10.00	\$10.00	\$25.00	Peanut	\$10.00	\$10.00	\$25.00
Buckwheat	\$10.00	\$10.00	\$25.00	Peas	\$10.00	\$10.00	\$25.00
Cabbage	\$10.00	\$10.00	\$25.00	Pepper	\$10.00	\$10.00	\$25.00
Cantaloupe	\$10.00	\$10.00	\$25.00	Pine	\$10.00	\$10.00	\$25.00
Carpetgrass	\$20.00	\$20.00	\$25.00	Plantain	\$10.00	\$10.00	\$25.00
Carrot	\$10.00	\$10.00	\$25.00	Pumpkin	\$10.00	\$10.00	\$25.00
Cauliflower	\$10.00	\$10.00	\$25.00	Radish	\$10.00	\$10.00	\$25.00
Celery	\$10.00	\$10.00	\$25.00	Rape	\$10.00	\$10.00	\$25.00
Centipedeagrass	\$20.00	\$20.00	\$25.00	Rice	\$10.00	\$10.00	\$25.00
Chicory	\$10.00	\$10.00	\$25.00	Rutabaga	\$10.00	\$10.00	\$25.00
Chives	\$10.00	\$10.00	\$25.00	Rye	\$10.00	\$10.00	\$25.00
Chufa	\$10.00	\$10.00	\$25.00	Ryegrass	\$20.00	\$20.00	\$25.00
Clover	\$10.00	\$10.00	\$25.00	Sage	\$10.00	\$10.00	\$25.00
Collards	\$10.00	\$10.00	\$25.00	Sorghum	\$10.00	\$10.00	\$25.00
Coriander	\$10.00	\$10.00	\$25.00	Soybeans	\$10.00	\$10.00	\$25.00
Corn	\$10.00	\$10.00	\$25.00	Spinach	\$10.00	\$10.00	\$25.00
Cornsalad	\$10.00	\$10.00	\$25.00	Squash	\$10.00	\$10.00	\$25.00
Cotton	\$10.00	\$10.00	\$25.00	Sunflower	\$10.00	\$10.00	\$25.00
Cucumber	\$10.00	\$10.00	\$25.00	Thyme	\$10.00	\$10.00	\$25.00
Dill	\$10.00	\$10.00	\$25.00	Timothy	\$20.00	\$20.00	\$25.00
Eggplant	\$10.00	\$10.00	\$25.00	Tomato	\$10.00	\$10.00	\$25.00
Endive	\$10.00	\$10.00	\$25.00	Triticale	\$10.00	\$10.00	\$25.00
Fescue	\$20.00	\$20.00	\$25.00	Turnip	\$10.00	\$10.00	\$25.00
Gourd	\$10.00	\$10.00	\$25.00	Vetch	\$10.00	\$10.00	\$25.00
Greens	\$10.00	\$10.00	\$25.00	Watermelon	\$10.00	\$10.00	\$25.00
Herb	\$10.00	\$10.00	\$25.00	Wheat	\$10.00	\$10.00	\$25.00
Kale	\$10.00	\$10.00	\$25.00	Zoysiagrass	\$20.00	\$20.00	\$25.00
Kohlrabi	\$10.00	\$10.00	\$25.00	Zucchini	\$10.00	\$10.00	\$25.00
Lab Lab	\$10.00	\$10.00	\$25.00				

(1) Samples of seeds that are unclean, field run or containing high inert matter shall be charged an additional \$10.00 per sample.

(2) Fees for tests on seed kinds not listed shall be based on the cost of a kind with a similar test.

(3) Louisiana Noxious Weed Seed Examination included in Purity Exam.

(4) For germination tests of mixtures of two or more kinds of seed, the fee is the sum of the fees established for germination tests for the components of the mixture. For a purity analysis performed in conjunction with a germination analysis of seed mixtures, the fee is the same as for that component of the mixture for which the highest charge would be made if separately analyzed. For purity analysis not performed in conjunction with a germination analysis the fee is the sum of the fees established for the purity tests for the components of the mixture if separately analyzed.

2. All State Noxious Weed Seed Examination—\$20. Species appearing on the USDA state noxious-weed seed requirements recognized in the administration of the FSA, reported as number found and rate per unit weight.

NOTE: Excludes AK and HI noxious weed seeds, Orbanche spp., Phelipanche spp., and Striga spp., which can be determined by request for an additional hourly fee.

3. Seed Count—\$10. Used to determine the number of seed per lb. or kg.

4. Seed Vigor Test—\$20. Including, but not limited to, accelerated aging and cool germination tests.

5. Varietal Purity—\$20. Including, but not limited to, seed and seedling morphology and fluorescence tests.

6. Red Rice Examination, 4 lb.—\$10; 8 lb.—\$20. Examination of rice sample for the presence of red rice.

7. Herbicide Bioassay—\$25.

8. Bulk Examination—Hourly Fee. Based on complexity of required examination. Examination conducted to determine the occurrence of particular components, including seeds of individual species or particles of specific inert matter (e.g. soil, ergot, sclerotia) in the sample.

9. Service Sample taken by LDAF Inspector—\$15. Sample taken in accordance with the AOSA or FSA seed sampling procedures.

10. Priority Rush Sample—\$25. A priority rush may be requested by the person submitting a sample for testing. Priority rush samples will be processed immediately upon receipt of sample; however, availability of sample results will depend upon the seed kind and the type of tests requested.

11. Hourly Fee—\$50. Applies to especially contaminated or extraordinary samples; also used for custom work such as sample preparation and special bulk samples. Total final cost to be negotiated and agreed upon by both parties prior to work being performed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended LR 7:164 (April 1981), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 14:603 (September 1988), LR 29:2632 (December 2003), LR 36:1220 (June 2010), LR 37:1373 (May 2011), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2704 (October 2013), amended LR 40:745 (April 2014), LR 41:911 (May 2015), LR 42:211 (February 2016), LR 43:1896 (October 2017).

Subchapter C. Labels; Records; Samples; Tolerances; Standards; Noxious Weed Seed

§131. Analysis Test; Labeling of Seed (Formerly §121)

A. - H. ...

I. The name and kind of variety of seed shall not be abbreviated on the label, but shall be written out in full, except in the case of annual and perennial ryegrass where “ann.” or “per.” may be used for the terms “annual” and “perennial”.

J. No seed shall be sold or offered for sale more than nine months, exclusive of the month of testing, after the date on any germination label applicable to the seed or seed lot. For all vegetable seed packaged in hermetically sealed containers, this period shall be extended to 24 months, exclusive of the month of testing.

1. ...

2. A new tag or label shall be used to state the true germination date. The original tag shall not be changed in any way. If relabeling stickers are used to update the germination information, the month and year of the true germination date must be stated, as well as the lot number that matches the existing original lot number.

K. - K.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433 and 3:1436.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), LR 16:492 (June 1990), LR 37:270 (January 2011), LR 37:2979 (October 2011), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2705 (October 2013), amended LR 40:746 (April 2014), LR 43:1897 (October 2017).

§141. Germination Standards for Vegetable Seed (Formerly §107)

A. Germination standards for vegetable seed shall be the same as those published under *United States Department of Agriculture Service and Regulatory Announcements Number 156* and subsequent amendments. Minimum germination, which shall also include hard seed, of vegetable or garden seed shall be as follows.

Seed Kind	Percent
Artichoke	60
Asparagus	70
Asparagus bean	75
Bean, garden	70
Bean, lima	70
Bean, runner	75
Beet	65
Broadbean	75
Broccoli	75
Brussels sprouts	70
Burdock, great	60
Cabbage	75
Cabbage, tronchuda	70
Cardoon	60
Carrot	55
Cauliflower	75
Celeriac	55
Celery	55
Chard, Swiss	65
Chicory	65
Chinese cabbage	75
Chives	50
Citron	65
Collards	80
Corn, sweet	75
Cornsalad	70
Cowpea	75
Cress, garden	75
Cress, upland	60
Cress, water	40
Cucumber	80
Dandelion	60
Dill	60
Eggplant	60
Endive	70
Kale	75
Kale, Chinese	75
Kale, Siberian	75
Kohlrabi	75
Leek	60
Lettuce	80
Melon	75
Mustard, India	75
Mustard, spinach	75
Okra	50
Onion	70
Onion, Welsh	70
Pak-choi	75
Parsley	60
Parsnip	60
Pea	80
Pepper	55
Pumpkin	75
Radish	75
Rhubarb	60
Rutabaga	75
Sage	60
Salsify	75
Savory, summer	55

Seed Kind	Percent
Sorrel	65
Soybean	75
Spinach	60
Spinach, New Zealand	40
Squash	75
Tomato	75
Tomato, husk	50
Turnip	80
Watermelon	70

B. The minimum germination standard for all other vegetable and garden seed, for which a standard has not been established, shall be 50 percent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:104 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2707 (October 2013), LR 43:1897 (October 2017).

§143. Standards for Agricultural Seed (Formerly §117)

A. ...

B. No agricultural and vegetable seed shall be sold, offered for sale or exposed for sale containing in excess of one percent of total weed seed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1444 and R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Seed Commission, LR 4:105 (April 1978), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2708 (October 2013), LR 43:1898 (October 2017).

Chapter 7. Certification of Specific Crops/Varieties Subchapter B. Grain and Row Crop Seeds

§763. Sugarcane (Tissue Culture) Certification Standards (Formerly §207)

A. - D. ...

E. Field Standards

Factor	Foundation	Registered	Certified
Isolation	10 ft.	10 ft.	10 ft.
Other Varieties (obvious)	None	1.00%	1.00%
Off-Type (definite)	None	1.00%	1.00%
Noxious Weeds:			
Johnsongrass	None	5 Plants/Acre	5 Plants/ Acre
Itchgrass	None	1 Plant/Acre	1 Plant/ Acre
Black Nightshade	None	3 Plants/Acre	3 Plants/Acre
Harmful Diseases:			
*Sugarcane Yellow Leaf Virus	None	10.00%	10.00%
**Sugarcane Mosaic	None	10.00%	10.00%
**Sugarcane Smut	None	0.50%	0.50%
Harmful Insects:	None	None	None
***Sugarcane Stem Borers	None	5.00%	5.00%
*Determined by lab analysis for the LSU Sugarcane Disease Detection Lab			
**Plants exhibiting symptoms			
***Determined by percentage of internodes bored			

F. - G.2.c. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1433.

HISTORICAL NOTE: Promulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 12:825 (December 1986), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 23:1284 (October 1997), amended by the Department of Agriculture and Forestry, Office of the Commissioner, Seed Commission, LR 30:1143 (June 2004), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Seed Commission, LR 33:1609 (August 2007), LR 36:1223 (June 2010), repromulgated by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, Agricultural Chemistry and Seed Commission, LR 39:2729 (October 2013), amended LR 40:756 (April 2014), LR 42:212 (February 2016), LR 43:1898 (October 2017).

Mike Strain, DVM
Commissioner

1707#061

RULE

Department of Environmental Quality Office of the Secretary Legal Affairs and Criminal Investigations Division

Regulatory Permit for Oil and Gas Well Testing (LAC 33:III.307)(AQ346)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.307 (AQ346).

This revision to the Section, Regulatory Permit for Oil and Gas Well Testing, allows well testing equipment to be utilized for longer than 10 operating days. The Section, Regulatory Permit for Oil and Gas Well Testing, currently limits operation of temporary separators, tanks, meters, and fluid-handling equipment to 10 operating days (LAC 33:III.307.E). The revision allows well testing equipment to be utilized for longer periods such that additional testing events can be authorized by the regulatory permit process. The basis and rationale for this Rule are to allow well testing equipment to be utilized for longer than 10 operating days such that additional testing events can be authorized by the regulatory permit process. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 3. Regulatory Permits

§307. Regulatory Permit for Oil and Gas Well Testing

A. - D. ...

E. Operation of temporary separators, tanks, meters, and fluid-handling equipment in excess of the following time periods shall not be authorized by this regulatory permit and must be approved separately by the administrative authority:

1. for horizontally-drilled wells completed with or without hydraulic fracturing, 60 days; and

2. for vertically-drilled wells, 10 days.

F. - G. ...

H. Definitions

Horizontally-Drilled Well—a well that is turned horizontally at depth, providing access to oil and gas reserves at a wide range of angles.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:457 (March 2009), amended by the Office of the Secretary, Legal Division, LR 43:942 (May 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:1898 (October 2017).

Herman Robinson
General Counsel

1710#026

RULE

Office of the Governor Board of Certified Public Accountants

Certified Public Accountants
(LAC 46:XIX.Chapters 3-19)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority vested in the State Board of Certified Public Accountants of Louisiana (board) by the Louisiana Accountancy Act, R.S. 37:71 et seq., the board has amended its Rules governing certified public accountants (CPAs) Chapters 3-19, to conform them to Act 553 of the 2016 Regular Session of the Louisiana Legislature and to update the rules generally as made necessary by the passage of time and for consistency with current board practices. The changes are set forth below.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XIX. Certified Public Accountants

Chapter 3. Operating Procedures

§301. Officers

A. The officers shall be chair, secretary, and treasurer. The duties of the respective officers shall be the usual duties assigned to the respective office. The newly elected officers shall assume the duties of their respective offices on the first day of the month following the election of the officers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997), LR 26:1967 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1899 (October 2017).

§305. Duties of the Secretary

A. The duties of the secretary include, but are not limited to the following.

1. - 4. ...

5. It shall be the responsibility of the secretary that annual listings of all certified public accountants, registrants in inactive or retired status, and CPA firms are maintained.

6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997), LR 26:1967 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1899 (October 2017).

§309. Meetings

A. Any public meeting may be called by the chair or by joint call of at least two of its members, to be held at the principal office of the board, or at such other place as may be fixed by the board. Regularly scheduled board meetings are usually held quarterly.

B. Meetings of the board shall be conducted in accordance with *Robert's Rules of Order* insofar as such rules are compatible with the laws of the state governing the board or its own resolutions as to its conduct. The chair or presiding officer shall be entitled to vote on every issue for which a vote is called.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended LR 9:207 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1067 (November 1991), LR 23:1113 (September 1997), LR 26:1967 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1899 (October 2017).

§311. Monthly Compensation

A. The officers of the board shall receive compensation of \$250 per month and other members shall receive \$200 per month. This compensation shall be for time expended by such members in conducting and/or monitoring examinations, attending board meetings and hearings, issuing of certificates and firm permits, conducting investigations, and discharging other duties and powers of the board.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:6 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1119 (September 1997), LR 26:1968 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1899 (October 2017).

§319. Assessment of Application, Annual and Other Fees

A. Certification, firm permit application, renewal, and other fees shall be assessed by the board in amounts not to exceed the following.

Application Fees	
Original certification application	\$250
Reciprocal certification application	\$120
Retired status application	\$50
Reinstatement of certificate application	\$500
Firm permit application	\$250
Annual Fees	
Renewal of certificate	\$120
Registration CPA inactive status	\$60
Registration CPA retired status	\$50
Renewal of firm permit	\$100
Plus per owner over 10	\$25
not to exceed	\$2,500
Notice of substantial equivalency	\$100
Other Fees (in amounts not to exceed)	
Temporary (provisional) licenses	\$100
Replacement of a CPA certificate	\$50*
Transfer of grades transfer fee	\$50
Written verifications	\$50
Pre-Exam Evaluation	\$100
Delinquent and other fees are cited in the Act.	

B. - B.3. ...

C. Returned Check. A fee not to exceed the allowable amount under R.S. 9:2782 will be assessed against each person who pays any obligation to the board with a returned check. Failure to pay the assessed fee within the notified period of time shall cause the application to be returned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended LR 9:209 (April 1983), LR 11:758 (August 1985), LR 13:13 (January 1987), LR 15:619 (August 1989), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997), LR 26:1968 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 28:1013 (May 2002), LR 31:1330 (June 2005), LR 43:1899 (October 2017).

Chapter 5. Qualifications; Education and Examination

§501. Definition

Accredited University or College—a university or college accredited by any one of the six regional accreditation associations (the Southern Association of Colleges and Schools; Middle States Commission on Higher Education; New England Association of Schools and Colleges; North Central Association of Colleges and Secondary Schools; Northwest Association on Colleges and Universities; and Western Association of Schools and Colleges).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1119 (September 1997), amended LR 26:1969 (September 2000), Office of the Governor, Board of Certified Public Accountants, LR 43:1900 (October 2017).

§503. Educational Requirements

A. To be eligible for examination by and under auspices of the board, an applicant shall possess a baccalaureate or higher degree, duly conferred by an accredited university or college recognized and approved by the board. The applicant shall present evidence which shall consist of one or more official transcripts certifying that the applicant has attained the foregoing degree and educational hours, and said

transcripts shall evidence award of credit for satisfactory completion of the following courses and credit hours, according to whether such courses and credits are taken as an undergraduate course and semester hour or a graduate course and semester hour.

	Undergraduate Semester Hours	Graduate Semester Hours
Accounting Courses		
Intermediate	6	3
Cost	3	3
Income tax	3	3
Auditing	3	3
Accounting Electives:	9	9
3 semester hours from one of the following:		
Advanced Financial Accounting,		
Not-for-profit Accounting/Auditing,		
Theory		
6 semester hours in accounting above the basic and beyond the elementary level		
Total Accounting Courses	24	21
	Undergraduate Semester Hours	Graduate Semester Hours
Business Courses (other than Accounting Courses)	24	24
Including at least 3 semester hours in Commercial Law		
Total Business Courses	24	24

1. The board will accept for business course credit semester hours earned in courses offered through the institution's College of Business and reported on official transcripts in the following areas:

a. - k. ...

1. CPA examination review courses if the curriculum is developed and taught by a faculty member under contract at the accredited college or university which is offering the course for credit.

2. ...

3. Up to six semester hours for internship and independent study may be applied to the education requirement, but may not be used to meet the accounting or business courses requirement.

4. ...

5. Remedial courses may be applied to the education requirement, but may not be used to satisfy the accounting or business courses requirement.

6. Credit hours for repeated courses for which credit has been previously earned may not be applied to the education requirement.

B. In the event that the applicant's degree does not reflect the credit hours in the courses prescribed by §503.A, the board may, on good cause shown by the applicant, allow the substitution of other courses that, in the board's judgment, are substantially equivalent to any of such prescribed courses or to the credit hours prescribed therein. Documentation of good cause for any such requested substitution shall be submitted by the applicant to the board upon affidavit sworn to and subscribed by the applicant and an officer of the university, college or other educational institution where the course to be substituted was taken. Such affidavit shall set forth a course description of the course sought to be substituted and a comparison of the content of such course to that of the course for which substitution is requested.

C. If the applicant's degree does not reflect the credit hours in the courses prescribed by §503.A, an applicant may become eligible for examination by and under the auspices of the board by having otherwise taken and completed the courses required by this rule and received credit for satisfactory completion thereof awarded by an accredited university, college, vocational or extension school recognized and approved by the board.

D. With respect to courses required for the degree, other than those specified by §503.A, the board does recognize credit received for courses granted on the basis of advanced placement examinations (such as CLEP, ACT or similar examinations). Except for correspondence or online courses at an accredited university approved by the board, the accounting and business course credits specifically listed in §503.A shall have been awarded pursuant to satisfactory completion of a course requiring personal attendance at classes in such course.

E. To be eligible for licensure by and under auspices of the board, an applicant shall have received credit for not less than 150 hours of postsecondary, graduate, or postgraduate education at and by an accredited college or university recognized and approved by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 11:757 (August 1985), LR 13:13 (January 1987), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:616 (August 1989), LR 17:1072 (November 1991), LR 23:1120 (September 1997), LR 26:1969 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1900 (October 2017).

§505. Examination

A. The examination shall test the knowledge and skills required for performance as a newly licensed certified public accountant. The examination shall include the subject areas of accounting and auditing and related knowledge and skills as the board may require. The examination shall consist of:

1. the uniform certified public accountant examination developed and scored by the American Institute of Certified Public Accountants; or

2. if applicable, the International uniform CPA qualification examination (IQEX) developed and scored by the American Institute of Certified Public Accountants.

B. General Procedures and Qualifications

1. Application. Examination candidates shall file complete application forms as provided in Chapter 7. A complete application is one that is properly filled out, accompanied by payment of the required fees and, if an initial application, accompanied by all required supporting documents and official transcripts. First time or transfer of grades candidates who have not taken their accounting courses in Louisiana must include a copy of the course description(s) of all accounting courses not clearly identified by titles listed in §503.A.

- a. Applications shall be due as specified by the board in the application form or instructions. The board or its designee will forward notification of eligibility for the examination to the National Association of State Boards of Accountancy (NASBA) National Candidate Database.

- b. Time and place of examination. Eligible candidates shall be notified of the time and place of the examination or shall be sent a notice to independently contact a test center provider identified by the board to schedule examination at a board-approved test site. Scheduling reexaminations must be made in accordance with Paragraph F.1 below. The board may set authorization periods in which eligible candidates may schedule examination or reexaminations.

- c. A candidate's failure to schedule in an authorization period shall result in forfeiture of examination fees.

2. - 2.a.ii. ...

3. Fee Refund. A candidate who fails to appear for the examination, or fails to schedule or reschedule an examination in the period required, shall forfeit examination fees subject to board policy. Rescheduling of appointments may be available depending on the amount of notice that is provided. A service charge may be assessed on all refunds of examination fees.

C. - D.2. ...

E. Determining and Reporting Examination Grades

1. ...

2. A candidate shall be required to pass all test sections of the examination as one component of qualifying for a license. Upon receipt of advisory grades from the examination provider, the board will review and may adopt the examination grades and will report the official results to the candidate. The candidate must attain the uniform passing grade established through a psychometrically acceptable standard-setting procedure and approved by the board.

F. Retake and Granting of Credit Requirements

1. A candidate may take the required test sections individually and in any order. Credit for any test section(s) passed shall be valid for a rolling qualifying period as measured from the actual date the candidate took that test section, without having to attain a minimum score on any failed test section(s) and without regard to whether the candidate has taken other test sections. The qualifying period shall be determined by the board and shall be comprised of no less than 18 months.

- a. Candidates must pass all test sections of the examination within a single rolling qualifying period, which begins on the date that any test section(s) passed is taken.

- b. Candidates shall not retake a failed test section(s) in the same testing "window." A testing window is equal to a calendar quarter (Jan-Mar, Apr-Jun, Jul-Sep, Oct-Dec). Candidates will be able to test no less than two months out of each testing window.

- c. In the event all test sections of the examination are not passed within a given rolling qualifying period, credit for any test section(s) passed outside that qualifying period will expire and that test section(s) must be retaken.

2. A candidate shall retain credit for any and all test sections of the examination passed as a candidate of another state if such credit would have been given under the then applicable requirements of this state.

3. The board may in particular cases extend the term of credit validity notwithstanding the requirements of Paragraphs 1 and 2, upon a showing that the credit was lost by reason of circumstances beyond the candidate's control.

4. A candidate shall be deemed to have passed the examination once the candidate holds at the same time valid credit for passing each of the test sections of the examination. For purposes of this Section, credit for passing a test section of the examination is valid from the actual date of the testing event for that test section, regardless of the date the candidate actually receives notice of the passing grade.

5. Transfer of Credits. Credits shall be accepted from other states when a candidate for transfer of credits has met all the requirements of Louisiana candidates except that he sat for the examination as a candidate for another state.

a. Applicant must have completed the education requirements of §503 prior to sitting for the examination. An exception to this rule will be allowed for a bona fide resident of another state who took the exam in his state of residency which did not have a baccalaureate degree requirement, or prior to August 1, 2016, did not have a 150-hour requirement. Such applicants may complete their education requirements after sitting for the exam.

b. Applicant shall submit a completed initial application with an official transcript from an accredited college or university and a statement from an officer of the state board from which he is transferring as to dates of passing the examination and grades made.

c. In addition to meeting the requirements for a transfer of credits, the applicant shall be required to pay a transfer fee at the time he requests the transfer.

G. Cheating

1. ...

2. For purposes of this rule, the following actions or attempted activities, among others, may be considered cheating or misconduct:

a. - e. ...

f. violation of the security measures or candidate conduct standards at test sites, or the nondisclosure prohibitions of the examination, or aiding or abetting another in doing so, or otherwise participating in the collection of test items for use, redistribution or sale;

g. retaking or attempting to retake a test section by an individual holding valid passing grades or a certificate, or by a candidate who has unexpired credit for having already passed the same test section, unless the individual has been directed to retake a test section pursuant to board order or unless the individual has been expressly authorized by the board to participate in a "secret shopper" program.

3. - 5. ...

6. The board or its designee shall notify the NASBA National Candidate Database, the AICPA, and/or the test site provider of the circumstances, so that the candidate may be more closely monitored in future examinations, if applicable.

G.7. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:6 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1119 (September 1997), LR 26:1970 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 29:1475 (August 2003), LR 32:2248 (December 2006), LR 43:1901 (October 2017).

Chapter 7. Qualifications; Application for CPA Examination

§701. Application Forms

A. Application for the uniform certified public accountant examination shall be made on the appropriate forms provided or approved by the board as provided in §505.B.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 6:8 (January 1980), LR 26:1971 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 29:1478 (August 2003), LR 43:1902 (October 2017).

§703. Examination Application

A. - B. ...

C. Candidates or applicants who have completed educational requirements at institutions outside the U.S. must have their credentials evaluated by the Foreign Academic Credentials Service or NASBA's International Evaluation Services.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated and amended LR 6:8 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1122 (September 1997), LR 26:1971 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 29:1478 (August 2003), LR 43:1902 (October 2017).

Chapter 9. Qualifications for Initial Certificate

§901. Eligibility for an Initial Certificate

A. To be eligible for initial certification, an applicant shall present proof, documented in a form satisfactory to the board, that he has attained age 18, met the education requirements of §503.E, and obtained such professional experience as is prescribed by §903.

B. To be eligible for reinstatement of a certificate which has expired by virtue of nonrenewal, or which was registered in inactive or retired status because an exemption from CPE had been granted, the applicant must satisfy the requirements of §1105.D.

C. ...

D. In satisfaction of the education requirements, the applicant must submit official transcripts for college credits earned after initial application for the CPA examination and any supporting documents evidencing proof of additional credits as required by the board. Any courses taken outside of Louisiana must include a copy of the course description(s) not clearly identified by the course title, or as requested by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 4:223 (June 1978), amended LR 6:7 (January 1980), LR 9:208 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1069 (November 1991), LR 26:1972 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1902 (October 2017).

§903. Qualifying Experience

A. The experience required to be demonstrated for issuance of an initial certificate pursuant to R.S. 37:75.G shall meet the requirements of this rule.

1. Experience may consist of providing any type of services or advice using accounting, attest, management advisory, financial advisory, tax, or consulting skills.

2. The applicant shall have their experience verified to the board by a certificate holder or one from another state. Acceptable experience shall include employment in government, industry, academia, or public practice. The board shall look at such factors as the complexity and diversity of the work.

a. Complexity and diversity of experience includes:

i. employment as a teacher of subjects primarily in the accounting discipline for an accredited college or university as defined in §501:

(a). the applicant shall have taught courses for academic credit in at least three different areas of accounting above the introductory or elementary level. Examples of these areas are intermediate accounting, advanced accounting, governmental accounting, international accounting, accounting theory, cost or managerial accounting, income taxes, auditing, and accounting information systems;

(b). the applicant shall have taught an accumulated course load of 24 semester hours or its equivalent for a period of no less than one year in the four years immediately preceding the date of application.

A.3. - B. ...

C. One year of experience may also include U.S. military service that consists of completion of a program of occupational training, holding an occupational specialty, or performing a specialty that is substantially equivalent to, or exceeds, all of the licensing requirements of R.S. 37:75 and the rules of the board. U.S. military specialty training, performance, and active practice that is substantially equivalent to §903.A and B is also acceptable as qualifying experience for applicants who may have satisfied the remainder of the licensing requirements outside of military service. Experience submitted under this provision must be verifiable. Recognition of military experience is subject to the following limitations.

1. Discipline by the military, or by any state or jurisdiction, for an act that would constitute grounds for refusal, suspension, or revocation of a license in this state, at the time the act was committed, provides a basis for the denial of the issuance of a certificate.

2. The provisions of this subsection shall not apply to any applicant receiving a dishonorable discharge.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 4:223 (June 1978), amended LR 6:7 (January 1980), LR 9:208 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:617 (August 1989), LR 23:1122 (September 1997), LR 26:1972 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1903 (October 2017).

Chapter 11. Issuance and Renewal of Certificate; Reinstatement

§1101. Certificate

A. When an applicant has met all the requirements for certification, the board shall issue to him a certificate that he is a certified public accountant in the state of Louisiana. All such certificates shall be valid only when signed by the chair and secretary of the board.

B. ...

C. R.S. 37:75(I) provides for the granting of a certificate under the Act to individuals who, except for the experience requirement, met the requirements to become a CPA that existed at June 17, 1999. Accordingly, R.S. 37:75(I) pertains to individuals who, prior to June 18, 1999, the effective date of the Act, previously held a valid certificate issued under former law. Such individuals are included as eligible to apply for a certificate under R.S. 37:75(I) irrespective of whether such individuals were currently registered in good standing as of the effective date of the Act, but provided that any certificate or license that was not in good standing as of June 17, 1999, was unrelated to a suspension, restriction, revocation, or a relinquishment which resulted from a board disciplinary action, consent order, or settlement agreement.

1. Prior to obtaining a certificate under the Act, individuals referenced by the R.S. 37:75(I) are required to renew and register their inactive status with the board annually and pay the annual renewal fee.

2. The experience required to be furnished to the board to be issued a certificate under the Act must conform to all of the requirements of R.S. 37:75(G) and related board rules and must be submitted with an application form provided by the board for this purpose and with the applicable fee.

3. R.S. 37:75(I) is only available for an initial certificate after June 17, 1999 under the Act. Subsequent to any issuance of a certificate under R.S. 37:75(I), renewals and applications for reinstatements of the certificate must conform to the requirements of R.S. 37:76 and related board rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1124 (September 1997), LR 26:1973 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1903 (October 2017).

§1103. By Reciprocity

A. ...

* * *

B. The board shall issue a certificate to an applicant pursuant to R.S. 37:76(C)(2) who holds a valid and in good standing certificate, license or permit issued by a substantially equivalent state as determined by the board or its designee. The applicant's experience shall be substantially equivalent to the requirements of R.S. 37:75(G) and the rules there under.

1. ...

2. Repealed.

C. For those applicants who do not qualify for reciprocity under the substantial equivalency standard, the board shall issue a certificate to a holder of a valid and in good standing certificate, license or permit issued by another state upon showing that:

1. - 4. ...

5. if the applicant's initial certificate, license, or permit was issued more than four years prior to the date of application, he/she must have fulfilled the continuing education requirements for a full compliance period as described in §1301.

D. - E.3. ...

F. International Reciprocity

1. The board may designate a professional accounting credential issued in a foreign country as substantially equivalent to a CPA certificate.

a. The board may rely on the International Qualifications Appraisal Board for evaluation of foreign credential equivalency, and may presume that an applicant with a foreign accounting credential that is covered by a current valid mutual recognition agreement (MRA) is substantially equivalent (subject to other qualifying requirements as provided in the MRA).

1.b. - 4. ...

5. The holder of a CPA certificate issued in reliance on a foreign accounting credential shall report any investigation undertaken, or sanctions imposed, by a foreign credentialing body against the CPA's foreign credential or license, or any discipline ordered by any other regulatory authority having jurisdictions over the holder's conduct in the practice of accountancy.

6. - 7. ...

8. The board shall notify the appropriate foreign credentialing authorities of any disciplinary actions or sanctions imposed against a CPA.

9. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:7 (January 1980), amended LR 9:208 (April 1983), LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1069 (November 1991), LR 23:1121 (September 1997), LR 26:1973 (September 2000), Office of the Governor, Board of Certified Public Accountants, LR 43:1903 (October 2017).

§1105. Certificate Application, Annual Renewals, Inactive or Retired Registration, Reinstatement, Practice Privileges under Substantial Equivalency

A. Applications

1. ...

2. Applications shall contain all of the information required by the board including but not limited to information regarding the satisfaction and verification of the requirements of R.S. 37:75(G) and other requirements as required by the Act or by the board.

B. Renewals and Current Year Reinstatement—Certificates

1. Each certified public accountant shall renew his certificate annually during the period for renewal on or before the last day of December preceding the year for which renewal is applicable.

2. The board shall set the period of time for renewal.

3. - 4. ...

5. Application for annual renewal of certified public accountant certificates shall be made online via the Internet, or on forms that may be furnished by the board, and shall be accompanied by renewal fees fixed by the board pursuant to §319. The renewal forms shall contain all of the items and information requested in the appropriate space in order to be acceptable.

6. ...

7. A delinquent renewal fee may be assessed against those certified public accountants who have not renewed prior to February 1.

8. In addition to the above fees, a fee may be assessed against those certified public accountants who have received three suspensions within the previous six years.

9. For good cause, the board may waive or suspend in whole or in part any of the fees, due dates, and procedures provided for in this Section.

10. Certified public accountants who have not timely renewed their certificates are in violation of R.S. 37:83 and therefore may be subject to the provisions of R.S. 37:81.

11. Failure to Timely Remit or Respond

a. No certificate of any certified public accountant who has failed to timely remit full payment of any fees, fines, penalties, expenses, or reimbursement of costs incurred by the board, which the certified public accountant owes the board or has been ordered to pay to the board shall be annually renewed, or reinstated.

b. The board may refuse to renew, or to reinstate, any certificate of any certified public accountant who has failed to comply with §1707.D.

12. Failure to Comply with CPE requirements. A licensee who has renewed an active CPA license but has not satisfied the CPE report requirements as described in §1301.A shall have their certificate status changed to "CPA inactive" status effective February 1 of the renewal year in which the deficiency occurred. The certificate holder will thus be allowed to register their certificate in inactive status annually until such time as they have satisfied the requirements for reinstatement to active licensure.

C. Annual Registration of CPA Inactive or CPA Retired Status

1. Each person entitled to use the designation "CPA inactive" under R.S. 37:75(I) and "CPA inactive" or "CPA retired" under R.S. 37:76(D)(2) shall register such status annually during the period for renewal on or before the last day of December preceding the year for which renewal is applicable.

2. The board shall set the period of time for renewal.

3. Annual registration expires on the last day of each calendar year, or on a date following December 31, if another date is determined by the board for good cause.

4. The board may send a notice of default to the last known address or email address of each registrant who fails to renew.

5. Application for annual registration of "CPA inactive" or "CPA retired" status shall be made online via the Internet, or on forms that may be furnished by the board, and shall be accompanied by renewal fees fixed by the board pursuant to §319. The renewal forms shall contain all of the

items and information requested in the appropriate space in order to be acceptable.

6. A delinquent renewal fee may be assessed against those registrants who have not renewed prior to February 1.

7. For good cause, the board may waive or suspend in whole or in part any of the fees, due dates, and procedures provided for in this Section.

8. The registrant shall affirm upon each annual registration form that he will abide by the applicable statutes and rules of the board governing the use of the designation "CPA inactive" or "CPA retired".

9. The board may reinstate the "CPA inactive" or "CPA retired" registration of any person upon the payment of the current year registration fee plus the registration fees for all years since the registrant was last registered.

D. Reinstatement of Certificate of Certified Public Accountant

1. An individual whose certificate has expired by virtue of nonrenewal, or who was registered in inactive or retired status because an exemption from CPE had been granted in a preceding year, shall present proof in a form satisfactory to the board that he has:

a. ...

b. completed no less than 120 hours of continuing professional education complying with Chapter 13 during the three-year period preceding the date of application for reinstatement.

2. applications for reinstatement of certificates pursuant to R.S. 37:76(F) shall:

a. be made on a form provided by the board; and

b. contain all of the information required by the board including but not limited to information regarding the satisfaction and verification of the experience and/or continuing education requirements referred to in Subparagraph D.1.b.

E. Practice Privileges under Substantial Equivalency

1. - 4.b.ii. ...

5. - 5.c. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended LR 9:208 (April 1983), LR 11:758 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997), LR 26:1974 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2249 (December 2006), LR 33:2634 (December 2007), LR 34:2398 (November 2008), LR 43:1904 (October 2017).

§1107. Change in Address or Practice Status

A. All certified public accountants, individuals registered in inactive or retired status, and individuals who have the privilege to practice under substantial equivalency shall promptly notify the board in writing within 30 days of any change in mailing address or practice status.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:8 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1125 (September 1997), LR 26:1976 (September 2000),

amended by the Office of the Governor, Board of Certified Public Accountants, LR 43:1905 (October 2017).

Chapter 13. Maintenance of Competency; Continuing Professional Education (CPE)

§1301. Basic Requirements

A. Each certificate holder shall participate in a minimum of 20 hours of continuing professional education (CPE) annually, and at least 80 hours of continuing professional education (CPE) within a rolling two-calendar-year period defined as the compliance period in §1301.F.1. Prior to January 1, 2016, each certificate holder shall participate in at least 120 hours of continuing professional education (CPE) every three years.

1. Accounting and Auditing Requirements. Certificate holders who participate in one or more attest engagements during the calendar year shall complete at least 8 hours during the calendar year in the subject area described in §1307.A.1 in fulfilling the above requirements. Certificate holders participating in attest engagements include those responsible for conducting substantial portions of the procedures and those responsible for planning, directing, or reporting on attest engagements. Persons who "plan, direct, and report" generally include the in-charge accountant, the supervisor or manager, and the firm owner who signs or authorizes someone to sign the attest engagement report on behalf of the firm.

2. Professional Ethics Requirements. All certificate holders who are required to complete CPE shall complete a course in professional ethics as required by the board, the contents of which must have been pre-approved by the board.

3. - 5. ...

B. Exemption. The board may grant an exemption from CPE in accordance with R.S. 37:76(D)(2). In order to be granted an exemption, the certificate holder must register in inactive or retired status and follow the provisions of §1707.B.

C. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:4 (January 1980), amended LR 9:208 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 15:614 (August 1989), LR 23:1116 (September 1997), LR 26:1976 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2249 (December 2006), LR 41:1664 (September 2015), LR 43:1905 (October 2017).

Chapter 15. Firm Permits to Practice; Attest Experience; Peer Review

§1501. CPA Firm Permits; Attest Experience;

Application, Renewal, Reinstatement; Internet Practice

A. - A.6. ...

B. A firm which does not have an office or a place of business in Louisiana that offers to perform or performs professional services for a client whose home office is in Louisiana may perform such services and use the title "CPA" or "CPA firm" without a permit only if:

1. the firm satisfies the ownership qualifications described in R.S. 37:77(C) and is subject to quality or peer

review under a state board of accountancy approved program or under the AICPA Peer Review Program and has completed such a quality or peer review within the last three years;

2. the firm performs such services only through individual licensees with practice privileges under R.S. 37:94 or holding a license issued under R.S. 37:77; and

3. the firm can lawfully perform such services in the state where such individual licensees have their principal place of business;

4. if the firm does not satisfy one or more of the requirements cited in Paragraphs 1, 2 and 3 above, the firm must apply for a permit for a board determination as to whether the firm is qualified to practice in Louisiana.

C. Firm Permits

1. Applications by firms for initial issuance and for renewal of permits pursuant to R.S. 37:77 shall be made on a form provided by the board. Applications will not be considered filed until the applicable fee, all requested information, and the required documentation prescribed in these rules are received.

2. A firm registered pursuant to R.S. 37:77 shall file with the board a written notification of any of the following events concerning the practice of public accountancy within this state within 30 days after its occurrence:

- a. change in the firm's designated licensee;
- b. formation of a new firm;
- c. addition of a new partner, member, manager or shareholder;
- d. any change in the name of a firm;
- e. termination of the firm;
- f. the occurrence of any event or events which would cause such firm not to be in conformity with the provisions of the Act or any rules or regulations adopted by the board.

3. In the event of any change in the legal form of a firm, such new firm shall within 30 days of the change file an application for an initial permit in accordance with board rules and pay the fee required by the rules.

4. Samples of original letterhead must also be included with permit and renewal applications. Names of licensed partners, shareholders, members, managers and employees, and names of non-licensee owners, may be shown on a firm's stationery letterhead. However, names of licensed partners, shareholders, members and managers shall be separated from those of licensed employees by an appropriate line. Licensees shall be clearly identified and the names of non-licensee owners shall be separated from the name of licensees by an appropriate line.

5. Any firm which falls out of compliance with the provisions of R.S. 37:77 due to changes in firm ownership or personnel after receiving, renewing, or reinstating a firm permit shall notify the board in writing within 30 days of the occurrence of changes which caused the firm to fall out of compliance with R.S. 37:77.

a. Such notification shall include an explanation as to how and why the firm is not in compliance and the date upon which the firm fell out of compliance with R.S. 37:77.

b. The firm shall also provide any additional information or documentation the board may request concerning the firm's noncompliance with R.S. 37:77.

6. Within 30 days of written notification to the board that the firm is not in compliance with R.S. 37:77, the firm shall notify the board in writing that the firm has taken corrective action to bring the firm back into compliance.

a. Such notification shall include a description of the corrective action taken, and the dates upon which the corrective action was taken.

b. The firm shall also provide any additional information or documentation the board may request concerning the corrective actions taken to ensure the firm's compliance with R.S. 37:77.

7. For good cause shown, the board may grant additional time for a firm to take corrective action to bring the firm into compliance with R.S. 37:77.

8. Any firm permit suspended or revoked for failure to bring the firm back into compliance within the time period described above, or within the additional time granted by the board, may be reinstated by the board upon receipt of written notification from the firm that the firm has taken corrective action to bring the firm back into compliance. Such notification shall include a description of the corrective action taken, the dates upon which the corrective action was taken, and any additional information or documentation the board may request concerning the corrective actions taken.

9. The board may impose additional requirements at its discretion, including but not limited to monetary fees, on any firm as a condition for reinstatement of a firm permit suspended or revoked for failure to bring the firm into compliance with R.S. 37:77.

10. At its discretion, the board may also take action against the CPA certificate or practice privilege of the firm's designated licensee for failure to provide written notification to the board required in this Section.

D. Firm Permit Renewals

1. Firm Permit renewals shall be made available and filed generally in accordance with methods established for certificate renewals, i.e., renewals are due by December 31, delinquent if not renewed prior to February 1, and expired if not renewed prior to March 1. The renewal forms shall contain all of the items and information requested in the appropriate space in order to be acceptable. Permits shall expire on the last day of each calendar year, or such date following December 31 if another date is determined by the board for good cause.

2. Application for annual renewal of firm permits shall be accompanied by renewal fees fixed by the board pursuant to §319.

3. Delinquent fees for firm permit renewals may be assessed by the board if not renewed prior to February 1.

4. For good cause, the board may waive or suspend in whole or in part any of the fees, due dates, and procedures provided for in this Section.

E. Reinstatement of Firm Permits

1. To reinstate a firm permit which has been expired for a year or more due to non-renewal, the firm shall be required to file an initial application for a firm permit and pay the applicable application fee. The firm shall also be required to pay applicable delinquent fees.

2. For good cause shown, the board may waive in whole or in part the reinstatement fees provided for in this Section.

3. In addition to reinstatement fees, an additional fee may be assessed against those CPA firms whose firm permits expired or were cancelled pursuant to this Section three times within six years.

4. In addition to the above fees, an additional reinstatement fee may be assessed against those CPA firms which continued to practice as a CPA firm after the expiration or cancellation of the firm permit pursuant to this Section. Such fee shall be determined by the length of the period of time the firm has practiced without a permit times the annual renewal fee including additional for delinquency each year.

5. No firm permit shall be renewed or reinstated by the board if the firm applying for renewal or reinstatement has failed to remit full payment of any fees, fines, penalties, expenses, or reimbursement of costs incurred by the board, which the firm owes the board or has been ordered to pay to the board.

F. Internet Practice. A CPA firm offering or performing services via a web site shall provide on the web site the firm's name, address, and the states in which the CPA firm holds a license or permit to practice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 3:308 (July 1997), amended LR 6:9 (January 1980), amended LR 9:209 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1070 (November 1991), LR 23:1124 (September 1997), LR 26:1980 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2249 (December 2006), LR 33:2634 (December 2007), LR 34:2399 (November 2008), LR 43:1905 (October 2017).

§1503. Peer Review and Practice Monitoring Programs

A. The board hereby requires firms that provide attest services, excluding engagements subject to a permanent inspection program of the Public Company Accounting Oversight Board, to participate in an approved peer review program enumerated in R.S. 37:77(G)(2)(a)(i), (ii), and (iii), and comply with the applicable requirements of that program. The purpose of this requirement is to improve the quality of financial reporting and to assure that the public can rely on the fairness of presentation of financial information on which CPA firms issue reports.

1. - 3.c. ...

4. Peer review reports shall be made available to the board after a review's acceptance date by the administering entity or its peer review committee. "Acceptance" shall be as described in the AICPA peer review standards and its interpretations. Timely completion of peer reviews and submission of, or making available reports, in the manner and periods required under this Section, are conditions of holding a valid permit.

a. For reviews commencing on or after January 1, 2009 and administered by the Society of Louisiana CPAs, peer review reports shall be made available or submitted to the board by the administering entity by making them available on a secure website or other secure means. Such reports must be made available within 45 days of the acceptance date.

b. For reviews administered by another board approved administering entity or sponsoring organization,

such as, a state society of CPAs, National Peer Review Committee, or state board of accountancy program with standards substantially equivalent to the AICPA's standards, peer review reports shall be submitted to the board by the firm directly or made available or submitted to the board by the sponsoring organization or administering entity by making them available on a secure website or other secure means. Such reports must be submitted or made available within 45 days of the acceptance date.

5. The reviewed firm must retain any or all of the documents related to the peer review in accordance with AICPA peer review standards. Upon request of the board, the reviewed firm shall timely submit such documentation to the board.

6. The objective of this reporting rule is primarily to reinforce the board's efforts to ensure that only appropriately qualified CPA firms are engaged in the offering and rendering of attest services subject to peer review.

7. For good cause shown, the board may grant or renew permits for a reasonable period of time pending the completion of a peer review or the submission of a report thereon.

B. - E.4.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1071 (November 1991), amended LR 23:1125 (September 1997), LR 26:1981 (September 2000), LR 35:236 (February 2009), LR 43:1907 (October 2017).

Chapter 17. Rules of Professional Conduct

§1700. General

A. Preamble

1. - 3. ...

4. In the interpretation and enforcement of these rules, the board may consider relevant interpretations, rulings, and opinions issued by the boards of other jurisdictions, the Securities and Exchange Commission, recognized professional standard setting organizations, and appropriate committees of professional organizations, but will not be bound thereby.

5. All licensees and certificate holders shall comply with the AICPA *Code of Professional Conduct* revised effective December 15, 2014, incorporated herein by reference in this rule. The AICPA *Code of Professional Conduct* may be found at the AICPA website, www.aicpa.org. The board's rules of professional conduct shall prevail if a conflict exists between it and the AICPA *Code of Professional Conduct*.

B. Definition. The following term has meaning which is specific to §1700-1703.

Professional Services—services arising out of or related to the specialized knowledge or skills associated with certified public accountants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1113 (September 1997), LR 26:1982 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2249 (December 2006), LR 43:1907 (October 2017).

§1701. Independence, Integrity

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:2 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1114 (September 1997), LR 26:1983 (September 2000), repromulgated LR 26:2240 (October 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2250 (December 2006), repealed LR 43:1908 (October 2017).

§1705. Responsibilities to Clients

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 6:3 (January 1980), amended LR 11:757 (August 1985), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1067 (November 1991), LR 23:1115 (September 1997), LR 26:1984 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2252 (December 2006), repealed LR 43:1908 (October 2017).

§1707. Other Responsibilities and Practices

A. Acting through Others

1. A CPA or CPA firm shall not permit others to carry out on his behalf or on the firm's behalf, either with or without compensation, acts which, if carried out by the CPA or CPA firm, would place him or the CPA firm in violation of the rules of professional conduct, professional standards, or any provisions of the Act.

2. Acting through an affiliated entity (an entity that is related to or affiliated by ownership to the CPA firm and/or its owners) that has a similar name. On and after January 1, 2008, a CPA firm shall not affiliate with an entity that has a similar name unless:

a. the affiliated entity is owned in accordance with §1707.A.2.e.i, or has been issued a firm permit by the board pursuant to §1707.A.2.e.ii; or

b. the CPA firm has entered into a written agreement with the board pursuant to §1707.A.2.e.ii;

c. a CPA firm seeking issuance, renewal, or reinstatement of a firm permit, to be effective on and after January 1, 2008 shall, as a condition thereof, satisfy the requirements of this Paragraph, §1707.A.2;

d. affiliated entities for purpose of this rule refers to entities which offer to clients or the public professional services or products related to the skills associated with CPAs. Conversely, entities that offer services or products that do not relate to matters of accounting and financial reporting, tax, finance, investment advice or financial planning, management, or consultation are excluded;

e. depending on the ownership structure, an affiliated entity may be required to obtain a firm permit in order to use a similar name which indicates that the CPA or CPA firm is providing services through the affiliated entity. A similar name is one that contains one or more names, or initials of the names, or reference to that/those names that are included in a CPA firm applying for or currently holding a firm permit, or one tending to indicate that such firm is a CPA firm:

i. affiliated entities wholly owned either by the owners of the CPA firm, on the same basis as the CPA firm is owned, or directly by the CPA firm may use a similar name and would not be required to obtain a firm permit;

ii. affiliated entities that are majority-owned (not wholly owned) by the owners of the CPA firm or by the CPA firm, or that are wholly owned but in different percentages are required to obtain a firm permit if the affiliated entity uses a similar name. If the affiliated entity does not qualify for a firm permit under R.S. 37:77, the CPA firm (i.e., one that does hold a firm permit) must enter into a written agreement with and acceptable to the board that sets forth that the CPA firm is responsible to the board for the actions of the affiliated entity and its owners;

iii. if the CPA firm and/or its owners (whether individually CPA licensed or not) own 50 percent or less of the other affiliated entity, a similar name may not be used for the affiliated entity;

f. under R.S. 37:77(C), a majority of the ownership of a CPA firm (in terms of financial interests and voting rights of all partners, officers, shareholder, members, or managers) must belong to holders of valid licenses. Thus an unlicensed "holding company" cannot own a majority or 100 percent of a CPA firm. Therefore, such a "holding company" would have to apply for a CPA firm permit and qualify as such. The holding company and the CPA firm must both be registered as firms with the board even though the holding company will not directly offer services to clients. If the holding company does not otherwise meet the requirements to be licensed (e.g., the requirements that a majority ownership interest is held by licensees; the owners must be active in the firm or affiliates; and, the name must not be misleading) then such a firm structure would not be permissible.

B. Use of the "CPA Inactive" or "CPA Retired" Designation

1. Certificate only holders under prior law. Prior to applying for and obtaining a certificate under R.S. 37:75.I, individuals who annually register in inactive status may use the "CPA inactive" designation in connection with an employment position held in industry, government or academia, or in personal correspondence.

a. Any such individual who offers to perform or performs, for the public, professional services of any type involving the use of accounting, management advisory, financial advisory, tax, or consulting skills shall not use the designation CPA or "CPA inactive" in connection therewith or in any other manner or in connection with any employment.

2. Certificate Holders Subject to CPE Exemption

a. Individuals granted an exception to continuing education requirements under R.S. 37:76(D)(2) shall not perform or offer to perform for the public one or more kinds of services involving the use of accounting, attest, management advisory, financial advisory, tax, or consulting skills and must place the word "inactive" or "retired", as applicable based on the individual's registered status, adjacent to their CPA title on any business card, letterhead, or any other document or device.

b. Any individual referenced in R.S. 37:76(D)(2) who after being granted an exemption under that Section offers to perform or performs for the public professional services of any type involving the use of accounting, management advisory, financial advisory, tax, or consulting skills shall not use the designation "CPA inactive" or "CPA-retired" in connection therewith or in any other manner or in connection with any employment.

c. A "CPA-retired" may perform uncompensated volunteer services as long as the individual does not sign any documents related to such services as a CPA.

C. Firm Name

1. The name under which a licensee practices public accounting must indicate clearly whether he is an individual practicing in his own name or a named member of a firm. If the name includes the designation "and Company" or "and Associates" or "Group" or abbreviations thereof, there must be at least two licensees involved in the practice, who may be either partners, shareholders, members or employees of the firm. However, names of one or more past partners, shareholders, or members may be included in the firm name of a successor firm.

2. A partner, member or shareholder surviving the death or withdrawal of all other partners, members or shareholders may continue to practice under the partnership or corporate name for up to two years after becoming a sole practitioner, sole member or sole shareholder.

3. A CPA firm name is misleading within the meaning of R.S. 37:83(G) if, among other things:

a. the CPA firm name implies the existence of a corporation when the firm is not a corporation; or

b. the CPA firm name includes the name of a person who is not a CPA.

4. A firm name not consisting of the names of one or more present or former partners, members, or shareholders may not be used by a CPA firm unless such name has been approved by the board as not being false or misleading.

D. Communications. A holder of a certificate or firm permit, or an individual in inactive or retired status shall, when requested, respond to communications from the board in the manner requested by the board within 30 days of the mailing of such communications by certified mail, or by such other delivery methods available to the board.

E. Applicability. All of the rules of professional conduct shall apply to and be observed by Louisiana licensees and CPAs licensed in other states who may be granted rights under the substantial equivalency provisions of R.S. 37:94. Notwithstanding anything herein to the contrary, they shall also apply to and be observed by individuals registered in inactive or retired status, where applicable.

F. Cooperation with Board Inquiry or Investigation. A licensee or CPA inactive or CPA retired status registrant shall fully cooperate with the board in connection with any inquiry or investigation made by the board. Full cooperation includes, but is not limited to, fully responding in a timely manner to all inquiries of the board or representatives of the board and claiming board correspondence from the U.S. Postal Service and from other delivery services used by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Board of Certified Public Accountants, LR 3:308 (July

1977), amended 4:358 (October 1978), LR 6:3 (January 1980), LR 9:207 (April 1983), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 17:1068 (November 1991), LR 23:1115 (September 1997), LR 26:1985 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 32:2252 (December 2006), LR 43:1908 (October 2017).

Chapter 19. Investigations; Hearings; Suspension, Revocations or Restrictions; Reinstatements

§1903. Investigating Officer

A. All charges shall be referred to the members of the board or other persons designated as investigating officers, who are appointed by the board chair. The investigating officer is the person who determines preliminary "probable cause" on behalf of the board, as referred to in R.S. 37:81(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended LR 12:88 (February 1986), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997), LR 26:1987 (September 2000), Office of the Governor, Board of Certified Public Accountants, LR 43:1909 (October 2017).

§1909. Hearing

A. - B. ...

C. Hearings shall be conducted in closed session, and shall be conducted by and under the control of the board chair, or a presiding officer appointed by the board chair.

D. In any investigation or pending adjudication proceeding, no party shall serve on any other party more than 25 interrogatories. Each sub-part of an interrogatory shall count as an additional interrogatory. The board chair or presiding officer may, in his discretion, allow more than 25 interrogatories upon receipt of a written motion setting forth the proposed additional interrogatories and the reasons establishing good cause for their use.

E. - F. ...

G. In any case of adjudication noticed and docketed for hearing, counsel for respondent and complaint counsel may agree, or the board chair or presiding officer may require, that a prehearing conference be held among such counsel, or together with the board's independent counsel, if any, for the purpose of simplifying the issues for hearing and promoting stipulations as to facts and proposed evidentiary offerings which will not be disputed at hearing.

H. Motions for continuance of hearing, for dismissal of proceeding, and all other prehearing motions shall be filed not later than 10 days prior to the date of the hearing. Any response or opposition to any prehearing motion shall be filed within 5 days of the filing of such prehearing motion. For good cause shown, the board chair or presiding officer may waive or modify these requirements. Each prehearing motion shall be accompanied by a memorandum which shall set forth a concise statement of the grounds upon which the relief sought is based and the legal authority therefor.

I. - J. ...

K. Any prehearing motion, other than a mutually agreed upon request for continuance as referred to in §1909.I, shall be referred for decision to the board chair or presiding officer for ruling. The board chair or presiding officer, in his

discretion, may refer any prehearing motion to the entire board for disposition.

L. Prehearing motions shall be ruled upon on the basis of the written information provided, without oral arguments. However, if the board chair or presiding officer refers the prehearing motion to the entire board for disposition, he may grant an opportunity for oral argument before the entire board, upon written request of respondent or of complaint counsel and on demonstration that there are good grounds therefor.

M. The order of proceedings at a hearing shall be as follows, but may be changed at the discretion of the board chair or presiding officer:

M.1. - N. ...

O. The board chair or presiding officer, board members, the respondent and his attorney, and complaint counsel or person presenting the case for the investigating officer, shall have the right to question or examine or cross-examine any witnesses.

P. All evidence presented at a hearing will be considered by the board unless the board chair or presiding officer determines that it is irrelevant, immaterial or unduly repetitious. Evidence may be received provisionally, subject to a later ruling by the board chair or presiding officer. The board chair or presiding officer may in his discretion consult with the entire board in executive session or with independent board counsel in making determinations on evidence.

Q. The final decision of the board in an adjudication proceeding shall be in writing and shall include findings of fact and conclusions of law, and shall be signed by the board chair or presiding officer on behalf of and in the name of the board. Upon issuance of a final decision, a certified copy shall be served upon the respondent and the respondent's counsel, if any, in the same manner of service prescribed with respect to administrative complaints in R.S. 37:81.

R. - V. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:71 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Board of Certified Public Accountants, January 1974, promulgated LR 6:9 (January 1980), amended by the Department of Economic Development, Board of Certified Public Accountants, LR 23:1126 (September 1997), LR 26:1988 (September 2000), amended by the Office of the Governor, Board of Certified Public Accountants, LR 33:2636 (December 2007), LR 43:1909 (October 2017).

Darla M. Saux, CPA, CGMA
Executive Director

1710#043

RULE

Office of the Governor Board of Home Inspectors

Education, Training and Testing (LAC 46:XL.Chapters 1-7)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 17:1475(4), the Board of Home Inspectors has amended this Part to provide for qualifying licensees and lead inspectors, to provide additional definitions, to address

insurance requirements, to better facilitate education, training and testing, to comply with the provisions of R.S. 17:1478(B) and to further clarify the duties of special investigative entities.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XL. Home Inspectors

Chapter 1. General Rules

§103. Domicile; Meetings; Quorum; Service of Process; Publication

A. - B. ...

C. The board shall publish quarterly a bulletin, which shall be the official journal of the board. This bulletin shall contain notice of all applications filed, board agendas, minutes of open meetings, request for declaratory relief, and generally serve as the board's form notice to licensees and the public. All licensees shall receive the bulletin free of charge. Others may subscribe to the bulletin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1474-1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2738 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:2857 (December 2010), LR 43:1910 (October 2017).

§109. Definitions

* * *

Qualifying Licensee—a licensed employee or member of a corporation, limited liability company and other in the business of providing home inspection services, designated by the entity to ensure compliance with the requirements of these rules and the home inspector licensing law.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1473 and R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2739 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1686 (August 2004), LR 36:2858 (December 2010), LR 41:919 (May 2015), LR 43:1910 (October 2017).

§113. Qualifications for Licensure and Application

A. Applicants must have:

1. - 2. ...

3. passed the required training and licensing examinations;

4. - 7. ...

8. applied to the Louisiana State Police for a criminal background check, pay all costs associated therewith and submit the results to the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 43:1910 (October 2017).

§115. Licensing Applications; Forms; Terms; Renewals; Inactive Status

A. - C. ...

D. Any licensee who fails to timely renew his license may thereafter obtain renewal upon filing a renewal application and upon paying the appropriate renewal and delinquent fees. The period for delinquent renewal of an

expired license shall be limited to the 12-month period immediately following the expiration date of the active license. Failure to renew an expired license during such 12-month period shall require the former licensee to pass the board approved licensing examination, pay the appropriate renewal and delinquent fees, file a renewal application, and complete all continuing education requirements accruing during the period of delinquency. Failure to renew an expired license within the 36-month period immediately following the expiration date of the active license shall, in addition to the above requirements, retake and pass 90 hours of classroom education as set forth in the board rules; obtain 10 hours of instruction and training from a certified infield trainer, as provided for in §119.C.3, and take the standards of practice and *Code of Ethics* report writing seminar offered by the board or other board approved education provider. Any home inspection performed during an expiration period is considered a violation and shall subject the licensee to disciplinary action by the board.

E. A licensee may hold inactive status by maintaining license renewals and continuing education requirements. -All insurance requirements for inactive licensees are waived. Licensees holding inactive status shall not perform home inspections.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1687 (August 2004), LR 36:2858 (December 2010), LR 37:2405 (August 2011), LR 41:919 (May 2015), LR 43:1910 (October 2017).

§117. Fees; Submission of Report Fees; Timeliness of Filings

A. - A.7. ...

B. Each home inspection performed by a home inspector under these rules shall be subject to a \$5 state inspection fee per home inspection. This fee is to be made payable to the Louisiana state Board of Home Inspectors and is to be remitted monthly in the following manner.

1. A reporting form, approved by the board, must be filed by the fifteenth day of the month following the inspection. The form shall list the inspections performed and total fees due. The home inspector is required to file a reporting form whether or not any inspections are performed during a calendar month.

2. ...

3.a. Failure to timely file a monthly inspection report and/or pay inspection report fees, shall result in a fine of \$25 plus an additional \$5 per inspection reported and/or performed.

b. Three or more untimely monthly filings in a calendar year may result in a suspension of license and/or additional fines.

B.4. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475-1477 and R.S. 37:1479.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2740 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 34:1926 (September 2008), LR 36:2858 (December 2010), LR 41:920 (May 2015), LR 43:1911 (October 2017).

§121. Continuing Education; Instructors

A.1. - A.2. ...

B. Continuing Education Courses

1. - 9. ...

10. Continuing education courses must be taught by continuing education providers who meet the criteria set forth in §121.F.1. Qualified guest lecturers may teach courses on behalf of continuing education provider instructors. The continuing education provider shall be responsible for confirming the qualifications of the guest lecturer.

B.11. - F.7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1477 and R.S. 37:1479-1480.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2742 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 36:2860 (December 2010), LR 37:2405 (August 2011), LR 38:2531 (October 2012), LR 40:1003 (May 2014), LR 43:314 (February 2017), LR 43:1911 (October 2017).

§127. Insurance

A. - A.2. ...

B. Each licensee shall file with the board a certificate of coverage showing compliance with the required terms and conditions of insurance coverage by the inspector's annual license renewal date. The home inspector shall identify the LSBHI as a certificate holder with the inspector's insurance company. The certificate, notice of cancellation, renewal or suspension shall be provided to the board directly by the insurance company.

C. - D. ...

E. Upon cancellation of any insurance where a gap in coverage may occur, the licensee shall immediately inform the board and cease performing home inspections. When replacement coverage is obtained, evidence shall be immediately transmitted to the board in accordance with §127.B.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1477 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2743 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1688 (August 2004), LR 41:921 (May 2015), LR 43:1911 (October 2017).

§129. Reciprocity

A. ...

B. Prior to being granted reciprocity, the applicant shall attend the LSBHI report writing seminar conducted by the board or its approved representative and pass the LSBHI-approve standards of practice and code of ethics examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1484.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2743 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 43:1911 (October 2017).

§133. Report of Address Changes

A. Every licensee shall report any change in office address, residence address, office phone, residence phone, and/or email address to the board, on the board approved change-of-information form posted on the board's website,

within 15 days of such change. The board shall acknowledge any change, in writing, and shall update all records accordingly.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 41:921 (May 2015), LR 43:1911 (October 2017).

§135. Display of License

A. - C. ...

D. All correspondence, inspection reports and advertisements shall identify the licensee with the term *licensed home inspector* or the acronym “LHI” along with the license number of the inspector.

E. All general advertising of home inspections by a corporation, limited liability, or other entity shall include at a minimum the license number of the qualifying licensee on the advertisement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 41:921 (May 2015), LR 43:1912 (October 2017).

§139. Prohibited Acts: Penalties and Costs

A. The board may suspend or revoke any license, or censure, fine, or impose probationary or other restrictions on any licensee for good cause shown which shall include but not be limited to the following:

1. - 9. ...

10. engaging in conduct or advertising or holding oneself out as engaging in or conducting the business or acting in the capacity of a home inspector without possessing a valid license or while possessing a license that is inactive, suspended, expired or revoked;

11. ...

12. Providing fraudulent documentation or information regarding continuing education requirements.

B. - B.3. ...

C. Violators of any of the provisions of these rules or the law may be fined by the board in an amount not to exceed \$1,000 per each separate violation.

1. All fines issued under this Chapter shall be due and payable within 30 days of the date of the imposition of the fine, unless the party fined submits a request, in writing, to the board within 30 days of the imposition of the fine requesting a defined extension of time to pay the fine or to make periodic payments.

2. If the fine imposed is not paid in full within 30 days as prescribed in §139.C.1 above, or as extended by the board after timely written request, the licensee’s license shall be automatically suspended without further action from the board until the fine is paid in full.

D. ...

E. The board, as a probationary condition or as a condition of a revocation or suspension of a license, may require a licensee to pay all costs of the board proceedings, including but not limited to those expenses related to the services of investigators, stenographers and attorneys, and any court costs.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1486-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2744 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1688 (August 2004), LR 41:921 (May 2015), LR 43:1912 (October 2017).

Chapter 3 Standards of Practice

§303. Definitions

A. The definitions in §109 of this Part are incorporated into this Chapter by reference. The following definitions apply to this Chapter.

Deficient—a condition of a system or component that, in the inspector’s professional opinion, may be in need of repair.

Home Inspector—any person licensed under these rules who holds himself out to the general public and engages in the business of performing home inspections on resale residential buildings for compensation and who examines any component of a building, through visual means and through normal user controls, without the use of mathematical sciences.

Lead Inspector—licensee responsible for being in compliance with board requirements when multiple licensed home inspectors perform on an inspection.

Serviceable—a state in which the system or component is functioning as intended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2745 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1689 (August 2004), LR 36:2861 (December 2010), LR 38:2532 (October 2012), LR 41:922 (May 2015), LR 41:1487 (August 2015), LR 43:1912 (October 2017).

§305. Purpose and Scope

A. ...

B. Home inspectors shall:

1. provide the client with a written pre-inspection contract, whenever possible, which shall:

a. - d. ...

e. state the name and license number, and contain the signature of the licensed home inspector, lead inspector, and/or qualifying licensee performing the inspection.

2. ...

3. submit a written report to the client within five days of the inspection which shall:

a. - c. ...

d. state the name, license number, and contain the signature of all licensed home inspectors conducting the inspection and identify the lead inspector or the qualifying licensee performing the inspection.

C. - C.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000), amended by the Office of the Governor, Board

of Home Inspectors, LR 30:1690 (August 2004), LR 38:2532 (October 2012), LR 43:1912 (October 2017).

§309. General Exclusions

A. Home inspectors are not required to inspect or report on:

1. - 5. ...
6. any component or system that was not inspected and so stated in the home inspection report or pre-inspection agreement.

A.7. - C.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1478.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2746 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1690 (August 2004), LR 36:2862 (December 2010), LR 38:2532 (October 2012), LR 41:922 (May 2015), LR 43:1913 (October 2017).

§319. Electrical System

A. - C. ...

D. The home inspector shall report on the presence or absence of smoke detectors.

E. The home inspector is not required to:

1. - 3. ...
4. inspect or test
 - a. ...
 - b. central security systems, including but not limited to heat detectors, motion detectors, control pads, carbon monoxide detectors, smoke detectors or any associated devices.

4.c. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2746 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1691 (August 2004), LR 36:2863 (December 2010), LR 38:2533 (October 2012), LR 41:923 (May 2015), LR 43:1913 (October 2017).

Chapter 5. Code of Ethics

§501. Code of Ethics

A. ...

B. Ethical Obligations

1. - 6. ...

7. The LHI shall not solicit to repair, replace or upgrade for compensation, any system or component of the home which the inspector noted as deficient or unsafe in his home inspection report, or any other type of service on the home upon which he has performed a home inspection from the time of the inspection until the date of the act of sale on the home inspected.

8. - 10. ...

11. The LHI shall not disclose inspection results or a client's personal information without approval of the client or the client's designated representative. At his discretion, the LHI may immediately disclose to occupants or interested parties safety hazards observed to which they may be exposed.

12. - 13. ...

14. The LHI shall report substantial and willful violations of this Code to the LSBHI.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2749 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1693 (August 2004), LR 36:2863 (December 2010), LR 37:2406 (August 2011), LR 41:924 (May 2015), LR 43:1913 (October 2017).

Chapter 7. Disciplinary Actions

§703. Complaints

A. Anyone with knowledge that a licensee or member of the public is or has been engaged in any conduct proscribed by the law or these rules, may file a written complaint with the board against that person. Complaints filed by members of the public must be filed within one year of the conduct alleged to be proscribed by the law or these rules. This shall not apply to complaints filed by the board.

B. An information memorandum approved by the board containing instructions for filing a complaint shall be mailed or emailed to anyone requesting such information from the board and shall be made available on the board's official website.

C. - E. ...

F. The board shall not consider complaints against those performing services that are under the jurisdiction of other regulatory agencies or licensing boards, such as, wood destroying insect inspections, appraisals, or services rendered by licensed architects, engineers, or general contractors, unless the persons rendering those services may have violated the provisions of these rules and/or the home inspector licensing law.

G. Based upon a review of the records of the board kept in the ordinary course of business, the chief operating officer of the board may initiate a complaint against a licensee based upon the delinquency or failure of the licensee to make timely payment of fees, fines, or assessments, upon the failure of the licensee to timely and properly renew a license, or upon the failure of the licensee to comply with reporting requirements, continuing education requirements, insurance requirements, or other requirements of the licensee. In all such cases, the chief operating officer shall send the licensee notification by email or certified mail specifically outlining the delinquency or violation, including any amounts due, if applicable. The chief operating officer may also initiate a complaint in accordance with this Section. The licensee shall either, pay any fees and fines due, provide proof of compliance or, in the event a complaint is filed, respond, in writing, within 14 days of receipt of the notice disputing the claim or amounts due. A licensee's failure to respond within the delays shall be prima facie proof of his noncompliance subjecting the licensee to immediate suspension after hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475, R.S. 37:1483, and R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1693 (August 2004), LR 40:1004 (May 2014), LR 43:1913 (October 2017).

§707. Investigations; Special Investigating Entity; Board Review

A. - B. ...

C. The SIE shall make an investigation of the charges and responses, with the sole purpose of determining whether

or not the allegations listed in the complaint indicate a possible violation of these rules or the home inspector licensing law. The SIE shall not visit or inspect the property at issue during the investigative process, but may contact the parties involved, and any third parties, to discuss the matter, or to request any further information or documentation needed to conduct the investigation. The SIE may review photographs, reports, correspondence and other documentation submitted by any party or third party in conducting the investigation. The SIE shall prepare and file a report of its findings with the board within 30 days of the completion of the investigation.

D. - D.4. ...

E. The report shall state whether each specific allegation of the complaint indicates a possible violation of these rules or the home inspector licensing law.

F. If the report states that any or all allegations of the complaint lack sufficient evidence to indicate a possible violation of these rules or the licensing law, the chief operating officer shall advise the complainant and respondent in writing that the evidence submitted was insufficient to support a particular allegation or all allegations in the complaint. The chief operating officer shall also advise the complainant and respondent that, in order for any of the lacking allegations of the complaint to be reviewed by the board, the complainant must make a written request for review by the board within 15 days of mailing of the report, must support the complaint with additional documentation or evidence and must set forth specific reasons why the SIE's determination on each allegation is incorrect.

G. If the complainant makes a written request for review by the board, the board shall review the report and the complainant's documentation. If the board finds that the allegations are unsupported by the evidence, the chief operating officer shall advise the complainant in writing that the board has concurred with the special investigating entity's conclusion that the complaint lacks sufficient evidence to support a possible violation of these rules or the home inspector licensing law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2750 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1694 (August 2004), LR 36:2863 (December 2010), LR 40:1004 (May 2014), LR 43:1913 (October 2017).

§709. Disciplinary Hearing; Procedure

A. If the special investigating entity's report or the board's review finds that there is sufficient evidence to indicate a possible violation of these rules or the home inspector licensing law, the board shall fix a time and place for a disciplinary hearing and give notice to the licensee and complainant. The disciplinary hearing shall be held in accordance with the adjudication provisions of the Administrative Procedure Act.

B. - B.5. ...

C. In all contested case hearings before the board, the chairman of the board shall serve as presiding officer. In the absence of the chairman, the vice chairman shall serve as presiding officer, or a presiding officer shall be selected by

the board. No presiding officer of a hearing shall participate in the consideration or decision of the matter or confection of the board's decision, order or opinion.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home Inspectors, LR 26:2751 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1695 (August 2004), LR 36:2863 (December 2010), LR 43:1914 (October 2017).

§713. Hearing Procedure; Decision; Notice; Effective Date; Rehearing

A. - D. ...

E. A board decision or order may be reconsidered by the board at the next board meeting on its own motion, or on motion by a party of record, for good cause shown pursuant to a written request filed at the board's office within 10 days following the date of the mailing of the final board order or decision.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1475 and R.S. 37:1485-1487.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Board of Home inspectors, LR 26:2751 (December 2000), amended by the Office of the Governor, Board of Home Inspectors, LR 30:1695 (August 2004), LR 38:2533 (October 2012), LR 41:924 (May 2015), LR 43:1914 (October 2017).

Albert J. Nicaud
Board Attorney

1710#002

RULE

Office of the Governor Division of Administration Racing Commission

Receiving Barn (LAC 35:III.5708)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 4:148, the Racing Commission has adopted LAC 35:III.5708. This Rule specifies the Racing Commission's authority to regulate receiving barn parameters, use, and occupancy.

Title 35

HORSE RACING

Part III. Personnel, Registration and Licensing

Chapter 57. Associations' Duties and Obligations

§5708. Receiving Barn

A. The association shall provide a receiving barn, which shall be a separate barn.

B. The stall size and number of stalls of the receiving barn shall be approved by the commission.

C. The receiving barn shall be restricted to horses that are entered and shipping in to run in a scheduled race, or shipping in/out for morning work and go.

D. No full-time or temporary stabling shall be allowed during an approved race meet and the receiving barn shall not be used as a quarantine facility by the association, unless otherwise approved by the commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 4:148.

Charles A. Gardiner III
Executive Director

1710#069

RULE

Office of the Governor Public Defender Board

Performance Standards for Attorneys Representing Juveniles in Life without Parole Cases (LAC 22:XV.Chapter 21)

The Public Defender Board, a state agency within the Office of the Governor, has adopted LAC 22:XV.Chapter 21, as authorized by R.S. 15:148. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq. The purpose of this Rule is to establish policies and procedures to ensure that public defenders, assistant public defenders, and assigned counsel perform to a high standard of representation and to promote professionalism in the representation of indigent capital defendants.

R.S. 15:148 directs the Louisiana Public Defender Board to adopt rules to: 1) create mandatory statewide public defender standards and guidelines that require public defender services to be provided in a manner that is uniformly fair and consistent throughout the state; and 2) create separate performance standards and guidelines for attorney performance in capital case representation, juvenile delinquency, appellate, and any other subspecialties of criminal defense practice as well as children in need of care cases determined to be feasible, practicable, and appropriate by the board. In compliance with the directives of R.S. 15:148, the Public Defender Board has adopted these performance standards for attorneys representing indigent capital defendants.

Title 22

CORRECTIONS, CRIMINAL JUSTICE AND LAW ENFORCEMENT

Part XV. Public Defender Board

Chapter 21. Performance Standards for Attorneys Representing Juveniles in Life without Parole Cases

§2101. Purpose

A. The standards are intended to encourage district public defenders, assistant public defenders and appointed counsel to perform to a high standard of representation and to promote professionalism in the representation of juveniles facing a possible sentence of life without parole or serving a sentence of life without parole. For the purpose of these standards, pursuant to *Roper v. Simmons*, *Graham v. Florida* and *Miller v. Alabama*, the term *juvenile* includes any individual who was under the age of 18 at the time of the alleged offense.

B. The standards are also intended to alert defense counsel to courses of action that may be necessary, advisable, or appropriate, and thereby to assist attorneys in deciding upon the particular actions to be taken in each case

to ensure that the client receives the best representation possible. The standards are further intended to provide a measure by which the performance of district public defenders, assistant public defenders and appointed counsel may be evaluated, including guidelines for proper documentation of files to demonstrate adherence to the standards, and to assist in training and supervising attorneys.

C. The language of these standards is general, implying flexibility of action that is appropriate to the situation. In those instances where a particular action is absolutely essential to providing quality representation, the standards use the word “shall.” In those instances where a particular action is usually necessary to providing quality representation, the standards use the word “should.” Even where the standards use the word “shall,” in certain situations, the lawyer’s best informed professional judgment and discretion may indicate otherwise.

D. These standards are intended to adopt and apply the Louisiana Rules of Professional Conduct, Louisiana Public Defender Board (LPDB) Performance Standards for Criminal Defense Representation in Indigent Capital Cases, LPDB Capital Defense Guidelines, LPDB Trial Court Performance Standards for Delinquency Representation, the Campaign for the Fair Sentencing of Youth (CFSY) Trial Defense Guidelines for Representing a Child Client Facing a Possible Life Sentence, the guidelines for capital defense set out by the American Bar Association’s *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, its associated commentary and the *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases*. In these standards, the ABA guidelines have been adapted and applied to meet the specific needs and legal requirements applicable to lawyers representing juveniles facing a possible sentence of life without parole in Louisiana while seeking to give effect to the intention and spirit of the ABA guidelines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1915 (October 2017).

§2103. Obligations of Defense Counsel

A. Since the representation of children facing a possible sentence of life without parole in adult court is a highly specialized area of legal practice, defense counsel should make extraordinary efforts on behalf of his or her client to ensure that trial proceedings “take into account how children are different, and how those differences counsel against irrevocably sentencing [children] to a lifetime in prison” [*Miller v. Alabama*, 132 S. Ct. 2455, 2469 (2012)] and that “[s]entences imposed without parole eligibility [are] reserved for the worst offenders and worst cases” [La. C.Cr.P. art. 878.1].

B. The primary and most fundamental obligation of the attorney representing a child facing a possible sentence of life without parole in adult court is to provide zealous and effective representation for his or her client at all stages of the process. The defense attorney’s duty and responsibility is to promote and protect the expressed interests of the child. Attorneys also have an obligation to uphold the ethical standards of the Louisiana rules of professional conduct, to act in accordance with the Louisiana rules of court, and to properly document case files to reflect adherence to these standards.

C. To ensure the preservation, protection and promotion of the client's rights and interests, counsel should:

1. be proficient in the applicable state, federal, and international law substantive and procedural governing juvenile transfer, prosecution of juveniles in adult court, mitigation, sentencing, appeals, and state and federal post-conviction relief;

2. acquire and maintain appropriate experience, skills and training;

3. devote adequate time and resources to the case;

4. ensure that the defense team is appropriately staffed in accordance with these standards (see performance standard 2105, training and experience of defense counsel; performance standard 2107, resources and caseloads; and performance standard 2115, assembling the defense team);

5. engage in the preparation necessary for high quality representation;

6. endeavor to establish and maintain a relationship of trust and open communication with the client;

7. make accommodations where necessary due to a client's special circumstances, including but not limited to age and its attendant circumstances, incompetence, mental or physical disability/illness, language barriers, cultural differences, and/or circumstances of incarceration.

D. Counsel assigned in any case in which the client is a juvenile and life without parole (LWOP) is a possible punishment should, even if the prosecutor has not transferred the case to adult court and/or has not indicated that LWOP will be sought, begin preparation for the case as one in which LWOP will be sought while employing strategies to avoid transfer and/or have the case designated as non-LWOP. Even if the case has not been filed as an LWOP case, if there exists a reasonable possibility to believe that the case could be amended to an LWOP charge, counsel should be guided by these standards. In considering whether there is any reason to believe that the case could be amended, counsel should have regard to the nature of the allegations, the practice of the local prosecuting agency, statements by law enforcement and prosecutors, media and public sentiment and any political factors that may impact the charging decision.

E. The attorney who provides legal services for a juvenile owes the same duties of undivided loyalty, confidentiality and zealous representation to the child client as is due to an adult client. The attorney's personal opinion of the child's guilt is not relevant to the defense of the case.

F. A child facing LWOP retains all decision-making authority granted to an adult client. The client's rights to make important decisions is not diminished by the client's status as a child (see perf. standard 2113, allocation of authority between counsel and client).

G. The attorney should communicate with the child in a trauma-informed and developmentally and age-appropriate manner that will be effective, considering the child's maturity, intellectual ability, language, educational level, special education needs, cultural background, gender, and physical, mental and emotional health. If appropriate, the attorney should file a motion for funding to hire a foreign language or sign language interpreter to be present at the initial interview, all subsequent interviews and at all stages of the proceedings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1915 (October 2017).

§2105. Training and Experience of Defense Counsel

A. Before agreeing to defend a juvenile facing a possible life without parole sentence in adult court, an attorney has an obligation to make sure that he or she has sufficient time, resources, knowledge and experience to offer zealous and high quality legal representation.

B. Counsel should have a mastery of any substantive criminal law and laws of juvenile and criminal procedure that may be relevant to counsel's representation, including ethical obligations for juvenile representation, adolescent development, juvenile transfer, obligations for juvenile representation in adult court (including these standards), mitigation, the process for sentencing juveniles facing life without parole, appeals and state and federal post-conviction. Counsel should also be familiar with the prevailing customs or practices of the relevant court and the policies and practices of the prosecuting agency.

C. Prior to representing a juvenile facing a possible life without parole sentence, at a minimum, counsel should have sufficient experience or training to provide high quality representation.

1. At least one attorney must have specialized training and relevant substantive experience representing child clients and shall annually complete at least six hours of training relevant to the representation of juveniles. In particular, at least one attorney must have experience interviewing and communicating with child clients in a trauma-informed and developmentally and age-appropriate manner. Additional training may include, but is not limited to:

- a. adolescent mental health diagnoses and treatment, including the use of psychotropic medications;

- b. how to read a psychological or psychiatric evaluation and how to use these in motions, including but not limited to, those involving issues of consent and competency relating to Miranda warnings, searches and waivers;

- c. normal childhood development (including brain development), developmental delays and intellectual disability;

- d. educational rights, including special educational rights and services and how to access and interpret school records and how to use them in motions, including but not limited to, those related to consent and competency issues;

- e. immigration issues regarding children;

- f. gang involvement and activity;

- g. factors leading children to delinquent behavior.

2. At least one attorney must have specialized training and relevant substantive experience representing individuals charged with homicide offenses in adult court, including, but not limited to, the investigation and presentation of sentencing mitigation. When possible, one attorney should have experience investigating and presenting death penalty mitigation at a capital sentencing hearing. Additional training may include, but is not limited to:

- a. identifying, documenting and interpreting symptoms of mental and behavioral impairment, including

cognitive deficits, mental illness, developmental disability, neurological deficits;

b. long-term consequences of deprivation, neglect and maltreatment during developmental years;

c. social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior;

d. effects of substance abuse;

e. the presence, severity and consequences of exposure to trauma;

f. sensitivity to issues of sexual orientation and gender identity;

g. identifying, developing and documenting institutional mitigation.

D. If, after being assigned a case, counsel finds that the case involves particular issues or procedures in which counsel does not have the experience or training necessary to provide high quality legal representation, counsel should acquire the necessary knowledge or skills or request resources for another attorney to provide such services.

E. In providing high quality representation, counsel should consult with and take advantage of the skills and experience of other members of the criminal defense community, juvenile defenders and certified capital defenders.

F. Defense counsel should complete a comprehensive training program in the defense of juvenile life without parole cases as required by these guidelines. Counsel should, on an ongoing basis, attend and successfully complete specialized training programs in the defense of juveniles facing life without parole sentences. In addition to specific training, counsel should stay abreast of changes and developments in the law and other matters relevant to the defense of juveniles facing life without parole sentences.

G. As a component of acquiring and maintaining adequate training, counsel should consult with other attorneys to acquire knowledge and familiarity with all facets of criminal representation, including information about practices of judges, prosecutors, and other court personnel. More experienced counsel should offer to mentor less experienced attorneys.

H. If personal matters make it impossible for defense counsel to fulfill the duty of zealous representation, he or she has a duty to refrain from representing the client. If it later appears that counsel is unable to offer effective representation in the case, counsel should move to withdraw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1916 (October 2017).

§2107. Resources and Caseloads

A. Counsel should not accept assignment to represent a juvenile facing life without parole unless he or she has available sufficient resources to offer high quality legal representation to the client in the particular matter, including adequate funding, investigative services, mitigation services, support staff, office space, equipment, research tools and access to expert assistance.

B. In assessing whether counsel has sufficient resources to accept an appointment, counsel should adhere to these standards as well as the case load standards set out by the Public Defender Board.

C. If, after being assigned a case, counsel discovers that he or she does not have available sufficient resources, then

counsel should demand on behalf of the client all resources necessary to provide high quality legal representation. Counsel should seek necessary resources from all available sources, including litigating for those resources or for appropriate relief should the resources not be made available. Counsel should document in the file the resources he or she believes are needed and any attempts to obtain those resources. Counsel should create an adequate record in court to allow a full review of the denial of necessary resources or the failure to provide appropriate relief. Counsel should consider appropriate case law and ethical standards in deciding whether to move to withdraw or take other appropriate action.

D. Counsel should maintain compliance with all applicable caseload and workload standards. When counsel's workload is such that counsel is unable to provide each client with high quality legal representation in accordance with these performance standards, counsel should exhaust all avenues for reasonable resolution. If the excessive workload issue is not resolved, counsel should move to withdraw from the case or cases in which representation of a juvenile facing life without parole in compliance with these performance standards cannot be provided.

E. Counsel should never give preference to retained clients over indigent clients and should give priority to Miller cases over other cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1917 (October 2017).

§2109. Professionalism

A. Counsel has an obligation to ensure that the case file is properly documented to demonstrate adherence to these standards. Counsel's file relating to a representation includes both paper and electronic documents as well as physical objects, electronic data and audio-visual materials. Counsel's file should be maintained in a fashion that will allow counsel to provide high quality representation to the client and allow successor counsel to clearly and accurately identify the work performed, the tactical decisions made, the materials obtained, the source from which materials and information were obtained and the work product generated in the representation. Counsel should clearly document work performed, including analysis of file materials, in such a way that other team members and successor counsel may take advantage of the work performed and avoid unnecessary duplication of effort.

B. Counsel should act with reasonable diligence and promptness in representing the client. Counsel should be prompt for all court appearances and appointments and, in the submission of all motions, briefs, and other papers. Counsel should ensure that all court filings are proofread and edited to protect the client's rights from being forfeited due to error. Counsel should be present, alert and focused on the client's best interests during all critical stages of the proceedings.

C. Counsel's obligation to provide high quality representation to the client continues until counsel formally withdraws or an order relieving counsel becomes final. Unless required to do so by law or the Louisiana Rules of Professional Conduct, counsel should not withdraw from a case until successor counsel has enrolled. Counsel who withdraws or is relieved should take all steps necessary to

ensure that the client's rights and interests are adequately protected during any transfer of responsibility in the case. Such steps should include ensuring compliance with any filing or other deadlines in the case and ensuring the collection or preservation of any evidence that may cease to be available if investigation were delayed.

D. All persons who are or have been members of the defense team have a continuing duty to safeguard the interests of the client and should cooperate fully with successor counsel. This duty includes, but is not limited to:

1. maintaining the records of the case in a manner that will inform successor counsel of all significant developments relevant to the representation and any litigation;

2. promptly providing the client's files, as well as information regarding all aspects of the representation, to successor counsel;

3. sharing potential further areas of investigation and litigation with successor counsel; and

4. cooperating with such professionally appropriate legal strategies as may be chosen by successor counsel.

E. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should take all steps necessary to ensure the client's rights and interests are fully protected during any transfer or reallocation of responsibility in the case. Counsel should seek to interview all persons who are or have been members of the defense team with an aim to:

1. promptly obtaining the client's files or a copy of the files, as well as information regarding all aspects of the representation;

2. discovering potential further areas of investigation and litigation; and

3. facilitating cooperation from current and former defense team members in order to coordinate professionally appropriate legal strategies.

F. Current and former counsel should maintain the confidences of the client and assert all available privileges to protect the confidentiality of work product and communications with the client. Where disclosure of privileged or confidential information is strictly necessary in carrying out the representation, such disclosures should be limited to those necessary to advance the interests of the client and should be made in circumstances that limit the extent of any waiver of privilege or confidentiality.

G. Where appropriate counsel may share information with counsel for a co-defendant, and work together with counsel for a co-defendant on investigatory, preparatory and/or strategic matters, but counsel's decisions should always reflect the needs of counsel's client with special consideration for client confidentiality. Counsel should never abdicate the client's defense to a co-defendant's counsel. Counsel should maintain full control of all decisions affecting the client. Counsel should consider whether it is appropriate to enter a formal joint defense agreement with one or more co-defendants.

H. Counsel and defense team members should provide full and honest cooperation with successor counsel undertaking the investigation and preparation of a claim of ineffective assistance of counsel. In providing honest cooperation, counsel should be alert to and avoid any

improper influence arising from a desire to assist the client or to protect him or herself.

I. Where counsel is the subject of a claim of ineffective assistance of counsel, he or she should not disclose any confidential or privileged information without the client's consent unless and until a court formally determines that privilege has been waived and then only to the extent of any such waiver. The disclosure of confidential or privileged information in such circumstances should be limited to those matters necessary to respond to specific allegations by the client concerning the lawyer's representation of the client. Nothing in this standard shall diminish the responsibility of counsel to cooperate fully with the client and successor counsel nor limit the ability of counsel to communicate confidential or privileged information to the client or his legal representatives within the protection of the lawyer-client relationship.

J. While ensuring compliance with the Louisiana Rules of Professional Conduct in relation to extrajudicial statements, counsel should consider the potential benefits and harm of any publicity in deciding whether or not to make a public statement and the content of any such statement. When making written or oral statements in judicial proceedings, counsel should consider the potential benefits and harm likely to arise from the public dissemination of those statements. In responding to adverse publicity, counsel should consider the interests of the client and whether a statement is required to protect the client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client.

K. At each stage and subject to the circumstances of each case, counsel should be mindful of the desirability of treating any victim or other person affected by the crime alleged against the client with respect, dignity and compassion. Counsel should avoid disparaging the victim directly or indirectly unless necessary and appropriate in the circumstances of the particular case. Counsel should undertake victim outreach through an appropriately qualified team member or the use of an expert in defense initiated victim outreach.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1917 (October 2017).

§2111. Conflicts of Interest

A. Counsel should be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. Loyalty and independent judgment are essential elements in the lawyer's relationship to a juvenile client. Conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person, or from the lawyer's own interests. Each potential conflict shall be evaluated with the particular facts and circumstances of the case and the juvenile client in mind. Where appropriate, counsel may be obligated to contact the Office of Disciplinary Counsel to seek an advisory opinion on any potential conflicts.

B. Conflicts of interest experienced by one counsel are relevant to all counsel: the existence of a conflict free lawyer on the defense team does not ameliorate the potential harm caused by a conflict affecting another lawyer on the team.

Counsel should have a procedure for identifying conflicts when receiving new assignments and reviewing existing cases for conflicts where there is a relevant change in circumstances. At a minimum, counsel should maintain a conflict index containing the names of current and former clients which should be checked against the name of the client and, where known, the name of the victim(s), the name of any co-defendant(s) and the names of any important witnesses.

C. Where a juvenile life without parole case involves multiple defendants, because of the unique nature of the sentencing hearing, a conflict will be presumed between the defendants and separate representation will be required.

D. The attorney's obligation is to the juvenile client. An attorney should not permit a parent or custodian to direct the representation. The attorney should not share information unless disclosure of such information has been approved by the child. With the child's permission, the attorney should maintain rapport with the child's parent or guardian, but should not allow that rapport to interfere with the attorney's duties to the child or the expressed interests of the child.

E. Conflicts of interest should be promptly resolved in a manner that advances the interests of the client and complies with the Louisiana Rules of Professional Conduct.

F. If a conflict develops during the course of representation, counsel has a duty to notify the client and, where required, the court in accordance with the rules of the court and the Louisiana Rules of Professional Conduct. Defense counsel should fully disclose to the client at the earliest feasible opportunity any interest in or connection with the case or any other matter that might be relevant to counsel's continuing representation. Such disclosure should include communication of information reasonably sufficient to permit the client to appreciate the significance of any conflict or potential conflict of interest.

G. Where the client files a motion, complaint or grievance against counsel in regard to the quality of his or her representation, counsel should notify the district defender or the agency responsible for the assignment of counsel to the case.

H. Any waiver of conflict that is obtained should comply with the requirements of the Louisiana Rules of Professional Conduct and should be obtained through and after consultation by the client with independent counsel who has explained:

1. that a conflict of interest exists;
2. the consequences to his defense from continuing with conflict-laden counsel; and
3. that he has a right to obtain other counsel.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1918 (October 2017).

§2113. Allocation of Authority between Counsel and Client

A. The allocation of authority between counsel and the client shall be managed in accordance with the Louisiana Rules of Professional Conduct, having particular regard to rules 1.2, 1.4, 1.14 and 1.16.

B. Counsel serves as the representative of the client and shall abide by the express wishes of the client regarding the

objectives of the representation. However, counsel shall provide the client with his or her professional opinions with regard to the objectives of the representation. In counseling the client, counsel shall refer not only to the law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make informed decisions. Counsel shall reasonably consult with the client about the means by which the client's objectives are to be accomplished and may take such action as is impliedly authorized by the representation.

C. Counsel shall explain to the client those decisions that ultimately rest with the client and the advantages and disadvantages inherent in these choices. Counsel shall abide by the client's decision, made after meaningful consultation with counsel, as to a plea to be entered, whether to waive jury trial, whether the client will testify and whether to appeal. However, counsel shall not abide by such a decision where the client is incompetent, including where the client is, in the circumstances, incapable of making a rational choice not substantially affected by mental disease, disorder or defect. In such circumstances, counsel should take the steps described in these standards relating to the representation of persons with diminished capacity and the raising of the client's incompetence.

D. Counsel should explain that final decisions concerning trial strategy, after full consultation with the child and after investigation of the applicable facts and law, are ultimately to be made by the attorney. The client should be made aware that the attorney is primarily responsible for deciding what motions to file, which witnesses to call, whether and how to conduct cross-examination, and what other evidence to present. Implicit in the exercise of the attorney's decision-making role in this regard is consideration of the child's input and full disclosure by the attorney to the client of the factors considered by the attorney in making the decision.

E. In order to ensure that consultation with the client is meaningful, counsel should communicate in a trauma-informed and developmentally and age-appropriate manner and make accommodations where necessary due to a client's special circumstances, such as age and its attendant circumstances, incompetence, mental or physical disability/illness, language barriers, cultural differences, and circumstances of incarceration.

F. While counsel is ordinarily responsible for determining the means by which the objectives of representation are to be accomplished, where the client revokes counsel's express or implied authority to take a particular course of action, counsel may not act as the agent of the client without that authority. This will not prevent counsel from taking professionally responsible steps required by these standards but counsel must not purport to be speaking on behalf of or otherwise acting as the agent of the client.

G. Counsel shall not take action he or she knows is inconsistent with the client's objectives of the representation. Counsel may not concede the client's guilt of the offense charged or a lesser included offense without first obtaining the consent of the client.

H. Where counsel and the client disagree as to the means by which the objectives of the representation are to be achieved counsel should consult with the client and seek a mutually agreeable resolution of the dispute. Counsel should utilize other defense team members in his or her efforts to resolve a dispute.

I. Where the client seeks to discharge counsel, every reasonable effort should be made to address the client's grievance with counsel and avoid discharge. Counsel should caution the client as to the possible negative consequences of discharging or attempting to discharge counsel and the likely result if any such attempt. Should the client persist with his desire to discharge counsel, the district defender or responsible agency should be immediately informed and counsel may request a substitution of counsel by the responsible agency. Counsel must move to withdraw when actually discharged by the client.

J. Any withdrawal of counsel, including a substitution of counsel, should occur with the leave of the court. Should the court refuse counsel leave to withdraw, then counsel should continue to represent the defendant.

K. A juvenile client's capacity to make adequately considered decisions in adult court when facing a possible sentence of life without parole may be diminished, whether because of age and its attendant circumstances, mental impairment or for some other reason. Where counsel reasonably believes that the child client has diminished capacity, he or she should:

1. as far as reasonably possible, maintain a normal client-lawyer relationship with the client;

2. if the client is at risk of substantial harm unless action is taken and the client cannot adequately act in his own interests, take reasonably necessary protective action. Such action may include: consulting with family members, using a reconsideration period to permit clarification or improvement of circumstances, using voluntary surrogate decision making tools such as durable powers of attorney or consulting with support groups, professional services, adult-protective agencies or other individuals or entities that have the ability to protect the client. In appropriate cases, counsel may seek the appointment of a fiduciary, including a guardian, curator or tutor, to protect the client's interests;

3. in taking any protective action, be guided by such factors as the wishes and values of the client to the extent known, the client's best interests and the goals of intruding into the client's decision-making autonomy to the least extent feasible, maximizing client capacities and respecting the client's family and social connections.

L. If counsel believes that the client will now or in the future seek to abandon some or all of the mitigation case or waive appellate or post-conviction review, counsel should consider consultation with additional counsel experienced and skilled in this area.

M. The client has a right to view or be provided with copies of documents in counsel's file. Acknowledging the dangers of case related materials being held in custodial facilities, counsel should strongly advise the client against maintaining possession of any case related material. Counsel should provide alternatives to satisfy the client's requests, such as more frequent visits with team members to review relevant documents in a confidential setting, or transferring files to successor counsel. Upon the termination of the

representation, the client will ordinarily be entitled to counsel's entire file upon request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1919 (October 2017).

§2115. Assembling the Defense Team

A. Counsel are to be assigned in accordance with these standards. A minimum of two counsel shall be assigned to each case. Where possible, lead counsel should participate in the decision of who should be assigned as additional counsel. Lead counsel should advocate for the assignment of additional counsel with the skills, experience and resources appropriate to the provision of high quality representation in the case. Lead counsel should have regard to his or her own strengths and weaknesses in recommending the assignment of additional counsel in order to ensure the formation of a defense team capable of providing high quality representation to the client in the particular case.

B. Lead counsel bears overall responsibility for the performance of the defense team, and should allocate, direct, and supervise its work in accordance with these performance standards. Subject to the foregoing, lead counsel may delegate to other members of the defense team duties imposed by these standards, unless the standard specifically imposes the duty on "lead counsel."

C. As soon as practical after assignment and at all stages of a juvenile life without parole case, lead counsel should assemble a defense team by:

1. requesting at least one additional counsel in accordance with these standards;

2. selecting and making any appropriate staffing, employment or contractual agreements with non-attorney team members in such a way that the defense team includes:

- a. at least one mitigation specialist and one fact investigator;

- b. at least one member with specialized training and knowledge in adolescent development, including but not limited to, developmental science and other research that informs specific legal questions regarding capacities, responsiveness to treatment and culpability;

- c. at least one member with specialized training in identifying, documenting and interpreting symptoms of mental and behavioral impairment in adolescents, including cognitive deficits, mental illness, developmental disability, neurological deficits; long-term consequences of deprivation, neglect and maltreatment during developmental years; social, cultural, historical, political, religious, racial, environmental and ethnic influences on behavior; effects of substance abuse and the presence, severity and consequences of exposure to trauma;

- d. individuals possessing the training and ability to obtain, understand and analyze all documentary and anecdotal information relevant to the client's history;

- e. sufficient support staff, such as secretarial, clerical and paralegal support, to ensure that counsel is able to manage the administrative, file management, file review, legal research, court filing, copying, witness management, transportation and other practical tasks necessary to provide high quality representation; and

- f. any other members needed to provide high quality legal representation, including people necessary to: reflect the seriousness, complexity or amount of work in a

particular case; meet legal or factual issues involving specialist knowledge or experience; ensure that the team has the necessary skills, experience and capacity available to provide for the professional development of defense personnel through training and case experience; or, for other reasons arising in the circumstances of a particular case.

D. In selecting team members, lead counsel should have specific regard to the overall caseload of each team member (whether indigent, pro bono or privately funded) and should monitor the caseloads of all team members throughout the representation. Counsel should have regard to the benefits of a racially and culturally diverse team.

E. Where staff assignments to a team are made by the director of a law office or the contracting agency, rather than lead counsel, lead counsel remains responsible for ensuring that the staffing assignments and the defense team are in compliance with these standards and are sufficient to permit high quality representation.

F. The defense team refers to those persons directly responsible for the legal representation of the client and those persons directly responsible for the fact and mitigation investigation. While others may assist the defense team, including lay and expert witnesses, they are not a part of the defense team as that term is used in this section. The mitigation specialist retained as a part of the defense team is not intended to serve as a testifying witness and if such a witness is necessary, a separate expert mitigation specialist should be retained.

G. Team members should be fully instructed on the practices and procedures to be adopted by the team, including the procedure for communication and decision-making within the team and how such matters will be recorded in the client file. Team meetings should be conducted no less than once every two weeks and should, wherever possible, include the in-person attendance of all team members. Team meetings should have an agenda and a record of the matters discussed, tasks assigned and decisions made at the team meeting should be maintained in the client file. All members of the team should be encouraged to participate and contribute.

H. Counsel should demand on behalf of the client all resources necessary to provide high quality legal representation and to ensure that all components of the defense team are in place. Counsel should promptly take the steps necessary to ensure that the defense team receives the assistance of all expert, investigative, and other ancillary professional services reasonably necessary or appropriate to provide high quality legal representation at every stage of the proceedings. If such resources are denied, counsel should make a complete record to preserve the issue for judicial review and seek such review. It is the responsibility of counsel to be fully aware of the potential resources available to assist in the representation of the client and the rules and procedures to be followed to seek and obtain such resources.

I. While lead counsel bears ultimate responsibility for the performance of the defense team and for decisions affecting the client and the case, all additional counsel should ensure that the team and its members are providing high quality representation in accordance with these performance standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1920 (October 2017).

§2117. Scope of Representation

A. Counsel should represent the client in the matter assigned from the time of assignment until relieved by the assignment of successor counsel or by order of the court.

B. Ordinarily, counsel representing a juvenile facing a life without parole sentence should assume responsibility for the representation of the client in all pending criminal and collateral proceedings involving the client where the favorable resolution of such an action is likely to be of significance to the juvenile life without parole case and for which counsel is adequately qualified and experienced. Counsel should represent the client in any new criminal proceeding arising during the course of the representation. Counsel should investigate and commence appellate or collateral proceedings regarding other criminal convictions or delinquency adjudications of the client where the favorable resolution of such an action is likely to be of significance to the juvenile life without parole case. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the JLWOP proceeding.

C. Where it is not appropriate for counsel to assume the representation of the client in other proceedings due to a lack of appropriate experience or qualifications, a lack of sufficient resources or for other reasons, counsel should take all reasonable steps to ensure that appropriately qualified counsel is representing the client.

D. Counsel should maintain close communication with and seek the cooperation of counsel representing the client in any other proceeding to ensure that such representation does not prejudice the client in his JLWOP proceedings and is conducted in a manner that best serves the client's interests in light of the JLWOP proceedings.

E. Where counsel's representation of a defendant is limited in its scope, lead counsel should ensure that the limitation is reasonable in the circumstances and obtain the client's informed consent to the limited scope of the representation. In obtaining informed consent, lead counsel should explain, in a trauma informed and age and developmentally appropriate manner, the exact limits of the scope of the representation, including both those purposes for which the client will and will not be represented. Where possible the agreement to provide representation that is limited in its scope should be communicated in writing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1921 (October 2017).

§2119. Relations with Client

A. Counsel at all stages of the case should make every appropriate effort to establish a relationship of trust and confidence with the client, and should maintain close contact with the client. Representation of a child facing a sentence of life without parole in adult court should proceed in a trauma-informed and developmentally and age-appropriate manner with a strong emphasis on the relationship between the defense team and the client.

B. Counsel should make every appropriate effort to overcome barriers to communication and trust, including those arising from the child's special circumstances, such as age and its attendant circumstances, trauma, incompetence, mental or physical disability/illness, language barriers, cultural differences, circumstances of incarceration, prior experiences in the criminal justice system and prior experiences of legal representation. Where barriers to communication or trust with counsel cannot be adequately overcome to allow for high quality representation of the client, such further steps as are necessary should be taken. In an appropriate case, this may include seeking the assignment of additional counsel or other team members or the substitution of counsel.

C. Lead counsel should ensure that the defense team as a whole is able to establish and maintain a relationship of trust and confidence with the client. All members of the team should be trained on interviewing and communicating with child clients in a trauma-informed and developmentally and age-appropriate manner. Where a particular team member is unable to overcome barriers to communication or trust, lead counsel should take all reasonable steps to remedy the problem. Where the relationship cannot be sufficiently improved, lead counsel should strongly consider removing or replacing the team member.

D. Understanding that a relationship of trust and confidence with the client is essential to the provision of effective representation, the defense team must take all reasonable steps to ensure that both the representation provided and the manner in which that representation is provided operate to develop and preserve such a relationship.

E. Understanding that regular contact and meaningful communication are essential to the provision of effective representation of a child facing a possible sentence of life without parole, the defense team should take all reasonable steps to ensure that the client is able to communicate regularly with the defense team members in confidential circumstances and should ensure that the client is visited by defense team members frequently, particularly where the client is in custody. Counsel may rely upon other members of the defense team to provide some of the required contact with the client but visits by other team members cannot substitute for counsel's own direct contact with the client. Given lead counsel's particular responsibilities, visits by other counsel in the case cannot substitute for lead counsel's own direct contact with the client.

F. In a trial level case, a JLWOP client should be visited by a member of the defense team no less than once every week, though visits would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to trial. In a trial level case a JLWOP client should be visited by an attorney member of the defense team no less than once every two weeks and by lead counsel no less than once every month, though visits by counsel would be expected to be much more frequent where there is active investigation or litigation in the case or in the lead up to, during and following trial.

G. In an appellate or post-conviction case, a JLWOP client may be visited less frequently but regular communication and actual visits remain critical to effective representation.

H. Counsel at all stages of the case need to monitor the client's physical, mental and emotional condition and consider any potential legal consequences or adverse impact upon the adequate representation of the client. Counsel should monitor the client's physical, emotional and mental condition throughout the representation both personally, through the observations of other team members and experts and through review of relevant records. If counsel observes changes in the client's appearance or demeanor, counsel should promptly conduct an investigation of any circumstances contributing to this change and take all reasonable steps to advance the best interests of the client. Recognizing the potential adverse consequences for the representation inherent in any substantial impairment of the client's physical, mental and emotional condition, counsel should take all reasonable steps to improve the client's physical, mental and emotional condition where possible.

I. Counsel at all stages of the case should engage in a continuing interactive dialogue with the client concerning all matters that might reasonably be expected to have a material impact on the case, such as:

1. the progress of and prospects for the investigation and what assistance the client might provide;
2. current or potential legal issues;
3. current or potential strategic and tactical decisions, including the waiver of any rights or privileges held by the client;
4. the development of a defense theory;
5. presentation of the defense case;
6. potential agreed-upon dispositions of the case, including any possible disposition currently acceptable to the prosecution;
7. litigation deadlines and the projected schedule of case-related events; and
8. relevant aspects of the client's relationship with correctional, parole, or other governmental agents (e.g., prison medical providers or state psychiatrists).

J. Counsel shall inform the client of the status of the case at each step and shall provide information to the client regarding the process and procedures relevant to the case, including any anticipated time frame.

K. In the absence of a specific agreement to the contrary, counsel shall provide the client with a copy of each substantive document filed or entered in the case by the court and any party. Counsel shall warn any incarcerated client of the dangers of keeping case related material in a custodial environment and take steps to ensure that the client may have reasonable access to the documents and materials in the case without the necessity of keeping the documents in the prison.

L. Upon disposition of the case or any significant issue in the case, counsel shall promptly and accurately inform the client of the disposition.

M. Counsel shall respond in a timely manner to all correspondence from a client, unless the correspondence is wholly unreasonable in its volume or interval.

N. Counsel should maintain an appropriate, professional office and should maintain a system for receiving regular collect telephone calls from incarcerated clients. Counsel should provide incarcerated clients with directions on how to contact the office via collect telephone calls (e.g. what days and/or hours calls will be accepted). Counsel should

determine whether telephone communications will be confidential and where they are not, should take all reasonable steps to ensure that privileged, confidential or potentially damaging conversations are not conducted during any monitored or recorded calls.

O. Counsel should advise the client at the outset of the representation and frequently remind the client regarding his rights to silence and to counsel. Counsel should take special care to ensure such crucial information is communicated in a trauma-informed and age appropriate manner.

1. Counsel should carefully explain the significance of remaining silent, and how to assert the rights to silence and to counsel. Counsel should specifically advise the client to assert his rights to silence and to counsel if approached by any state actor seeking to question him about the charged offense, any other offense or any other matter relevant to guilt, penalty or a possible claim for relief. Counsel should take all reasonable steps to assist the client in asserting these rights, including providing a written assertion of rights for the client to use and asserting these rights on behalf of the client. Counsel should have regard to any special need or vulnerability of the client likely to impact his effective assertion of his rights. Counsel should especially consider the client's age, development and familiarity with the criminal justice system in considering how to support the client in effectively asserting his rights.

2. In particular, counsel should advise the client not to speak with police, probation officers, or other government agents about the offense, any related matters or any matter that may prove relevant in a sentencing hearing without the presence of counsel. The client should be advised not to speak or write to any other person, including family members, friends, or co-defendants, about any such matters. The client should also be advised not to speak to any state or court appointed expert without the opportunity for prior consultation with counsel.

3. Counsel should also be conscious of the possible interest of media organizations and individual journalists and should advise the client not to communicate with the media, except as a part of a considered strategy undertaken on the advice of counsel.

P. If counsel knows that the client will be coming into contact with a state actor in circumstances relevant to the representation, counsel should seek to accompany the client to prevent any potentially harmful statements from being made or alleged.

Q. Beginning at the outset and continuing throughout representation, counsel should endeavor to connect the client with all possible educational and programming opportunities whether the client is in or out of custody. Counsel should advise the client about the importance of good behavior during the pendency of his criminal matter and seek to find solutions to any impediment to the client's good behavior. Counsel should keep in mind that demonstrating a client's ability and potential to change, grow and be rehabilitated is central to a Miller sentencing hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1921 (October 2017).

§2121. Counsel's Initial Interviews with Client

A. Recognizing that first contact with a juvenile client facing a possible life without parole sentence is an extremely

important stage in the representation of the client, counsel should take all reasonable steps to conduct a prompt initial interview designed to protect the client's position, preserve the client's rights and begin the development of a relationship of trust and confidence.

B. Counsel should take all reasonable steps to ensure that the client's rights are promptly asserted, that the client does not waive any right or entitlement by failing to timely assert the right or make a claim, and that any exculpatory or mitigating evidence or information that may otherwise become unavailable is identified and preserved.

C. Counsel should ensure that a high level of contact is maintained at the outset of the representation that is at least sufficient to begin to develop a relationship of trust and confidence and to meaningfully communicate information relevant to protecting the client's position and preserving the client's rights.

D. An initial interview of pre-trial clients should be conducted within 24 hours of counsel's assignment to the case unless exceptional circumstances require counsel to postpone this interview. In that event or where the client is being represented in appellate or post-conviction proceedings, the interview should be conducted as soon as reasonably possible.

E. Preparing for the Initial Interview

1. Prior to conducting the initial interview of a pre-trial client, counsel should, where possible and without unduly delaying the initial interview:

a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known;

b. obtain copies of any relevant documents that are available, including copies of any charging documents, warrants and warrant applications, law enforcement and other investigative agency reports, autopsy reports, and any media accounts that might be available;

c. request mental health, juvenile assessment center, detention center or education records, including any screenings or assessments, that may help in the initial interview with the client; and

d. consult with any predecessor counsel to become more familiar with the case and the client.

2. In addition, where the pre-trial client is incarcerated, counsel should:

a. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;

b. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and

c. be familiar with any procedures available for reviewing the trial judge's setting of bail;

d. be familiar with the requirements of PREA and IDEA and utilize any failure to follow these laws to advocate for release or, in the alternative, placement in a more appropriate facility;

e. advocate for placement in a juvenile detention facility.

3. Prior to conducting the interview of a client at appellate and post-conviction stages, counsel should, where possible and without unduly delaying the initial interview:

- a. be familiar with the procedural posture of the case;
- b. obtain copies of any relevant documents that are available that provide information on the nature of the offense and the conduct and outcome of prior stages of the proceedings;
- c. consider consulting with any predecessor counsel to become more familiar with the case and the client.

F. Conducting the Interviews

1. Counsel should not expect to adequately communicate all relevant information or begin to develop the necessary relationship with the client in a single interview but should undertake an initial series of interviews designed to achieve these goals. Given the peculiar pressures and issues presented in representing a juvenile client in a life without parole case, counsel should seek to develop a relationship of trust and confidence before questioning the client about matters relevant to the offense or mitigation.

2. Counsel should always interview the client in an environment that protects the attorney-client privilege. Counsel should take reasonable efforts to compel court and other officials to make necessary accommodations for private discussions between counsel and client in courthouses, lock-ups, jails, prisons, detention centers, hospitals, forensic mental health facilities and other places where clients confer with counsel.

3. Counsel should take all reasonable steps to ensure at the initial interview and in all successive interviews and proceedings that barriers to communication and trust are overcome.

4. The scope and focus of the initial interviews will vary according to the circumstances of the case, the circumstances of the client and the circumstances under which the interviews occur.

5. Information to be provided to the client during initial interviews includes, but is not limited to:

- a. the role of counsel and the scope of representation, an explanation of the attorney-client privilege, the importance of maintaining contact with counsel, and instructions not to talk to anyone, including other inmates, about the facts of the case or matters relevant to the sentencing hearing without first consulting with the attorney;
- b. describing the other persons who are members of the defense team, how and when counsel, or other appropriate members of the defense team, can be contacted; and when counsel, or other members of the defense team, will see the client next;
- c. a general overview of the procedural posture and likely progression of the case, an explanation of the charges, the potential penalties, and available defenses;
- d. what arrangements will be made or attempted for the satisfaction of the client's most pressing needs; e.g., medical or mental health attention, education, other conditions of confinement issues, contact with family or employers;
- e. realistic answers, where possible, to the client's most urgent questions;
- f. an explanation of the availability, likelihood and procedures that will be followed in setting the conditions of pretrial release;

g. a detailed warning of the dangers with regard to the search of client's cell and personal belongings while in custody and the fact that conversations with other inmates, telephone calls, mail, and visitations may be monitored by jail officials. The client should also be warned of the prevalence and danger presented by jailhouse informants making false allegations of confessions by high profile prisoners and advised of the strategies the client can employ to protect himself from such false allegations;

h. assess whether there may be some question about the child's competence to proceed or the existence of a disability that would impact a possible defense or mitigation;

i. an understanding of the conditions of incarceration:

i. whether the child is being held in an adult jail or juvenile detention center;

NOTE: if the child is being held in an adult jail, counsel should advocate that the child be placed in a juvenile detention center.

ii. if the child is being held in an adult jail, whether the child has any contact with adult inmates;

iii. whether the child is being provided education in compliance with state and federal law;

iv. whether the child is receiving adequate medical, dental and mental health care;

v. whether the child has adequate clothing, bedding and personal hygiene products;

vi. whether the child has been exposed to or is at risk of physical violence, sexual assault or self-harm;

vii. whether the child has adequate access to physical exercise and natural light.

6. Information that should be acquired as soon as appropriate from the client includes, but may not be limited to:

- a. the client's immediate medical needs and any prescription medications the client is currently taking, has been prescribed or might require;
- b. whether the client has any pending proceedings, charges or outstanding warrants in or from other jurisdictions or agencies (and the identity of any other appointed or retained counsel);
- c. the ability of the client to meet any financial conditions of release or afford an attorney;
- d. the existence of potential sources of important information which counsel might need to act immediately to obtain and/or preserve.

7. Appreciating the unique pressure placed upon juvenile defendants facing the possibility of a life without parole sentence and the extremely sensitive nature of the enquiries that counsel must make, counsel should exercise great caution in seeking to explore the details of either the alleged offense or matters of personal history until a relationship of trust and confidence has been established that will permit full and frank disclosure.

8. Where possible, counsel should obtain from the client signed release forms necessary to obtain client's medical, psychological, education, military, prison and other records as may be pertinent.

9. Counsel should observe and consider arranging for documentation of any marks or wounds pertinent to the case, and secure and document any transient physical evidence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1923 (October 2017).

§2123. Procedures that Subject Client to the Jurisdiction of Criminal Court

A. Where a child's prosecution begins in juvenile court, counsel should be familiar with laws subjecting a child to the exclusive jurisdiction of a court exercising criminal jurisdiction, including the offenses subjecting the client to such jurisdiction. Counsel should seek to discover at the earliest opportunity whether transfer will be sought.

B. Counsel should fully explain the procedures by which a child can be transferred to adult court and the consequences of transfer to the child and the child's parents.

C. Counsel should advocate for the child to remain in the jurisdiction of juvenile court but should only do so after assessing the strategic advantages and disadvantages and the need to present facts and mitigating evidence to the district attorney in an effort to persuade the district attorney to keep the child in juvenile court.

D. Where a continued custody hearing will be held, counsel shall not, except in extraordinary circumstances, waive the continued custody hearing. Counsel shall fully prepare for the continued custody hearing in accordance with performance standard 2125, continued custody hearings.

E. If the child has already been transferred to adult proceedings and counsel did not represent the child in juvenile court, counsel should obtain the juvenile court records and files and the juvenile court attorney's entire file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1925 (October 2017).

§2125. Continued Custody Hearings

A. The attorney should take steps to see that the continued custody hearing is conducted in a timely fashion unless there are strategic reasons for not doing so.

B. In preparing for the continued custody hearing, the attorney should become familiar with:

1. the elements of each of the offenses alleged;
2. the law for establishing probable cause;
3. factual information that is available concerning probable cause;
4. the subpoena process for obtaining compulsory attendance of witnesses at continued custody hearing and the necessary steps to be taken in order to obtain a proper recodation of the proceedings;
5. the child's custodial situation, including all persons living in the home;
6. alternative living arrangements for the client where the current custodial situation is an obstacle to release from detention; and
7. potential conditions for release from detention and local options to fulfill those conditions, including the criteria for setting bail and options for the family to meet bail requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1925 (October 2017).

§2127. Investigation

A. Counsel's Responsibility to Investigate

1. Counsel has an ongoing duty to conduct a high quality, independent, exhaustive investigation of all matters relevant to the guilt phase, sentencing phase, any possible agreed upon disposition, any potential claim for relief and any possible reduction of the case to a non-JLWOP prosecution. A high quality, exhaustive investigation will be prompt, thorough and independent.

2. Counsel should act promptly to ensure that the client is not prejudiced by the loss or destruction of evidence or information, whether in the form of physical evidence, records, possible witness testimony or information from a non-testifying witness. Counsel should take reasonable steps to gather and preserve evidence and information at risk of loss or destruction for later use in the case or for use by successor counsel. These steps may include retaining an expert to gather, preserve or examine evidence before it is altered or destroyed or to interview witnesses who may become unavailable. Counsel should be conscious of any procedural limitations or time bars and ensure that the investigation be conducted in a timely fashion to avoid any default or waiver of the client's rights. Similarly, counsel should be aware of or promptly become aware of the period for which relevant records are retained and ensure that the investigation be conducted in a timely fashion to avoid the destruction of relevant records.

3. The investigation relevant to the guilt phase of the trial should be conducted regardless of any admission or statement by the client concerning the facts of the alleged crime, or overwhelming evidence of guilt, or any statement by the client that evidence bearing upon guilt is not to be collected or presented.

4. The investigation relevant to the sentencing phase of the trial should be conducted regardless of any statement by the client that evidence bearing upon the penalty is not to be collected or presented. This investigation should comprise extensive and ongoing efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence or argument that may be offered by the prosecutor.

5. No area of inquiry or possible evidence in the guilt or sentencing phase investigations should be ruled out until a thorough investigation has been conducted. Counsel should seek to investigate all available evidence and information and defer strategic decisions regarding what evidence to present until after a thorough investigation has been conducted. Both at guilt and sentencing phases, counsel should not halt investigation after one seemingly meritorious defense theory has been discovered, but should continue to investigate, both following up on evidence supporting known defense theories and seeking to discover other potential defense theories.

6. Where counsel enrolls in a case in which other counsel have previously provided representation, counsel should not rely on a prior defense team's investigation or theory of the case, but rather should independently and thoroughly investigate and prepare the defense, especially where prior counsel had a conflict of interest, or there is reason to believe counsel's performance was deficient.

7. Counsel are responsible for ensuring that a high quality, exhaustive investigation is conducted but are not personally responsible for performing the actual investigation. A team should be assembled containing sufficient members possessing the appropriate skills and resources to conduct a high quality and exhaustive investigation.

B. Conduct of the Investigation

1. Counsel should conduct a high quality, independent and exhaustive investigation of all available sources of information utilizing all available tools including live witness interviews, compulsory process, public records law, discovery, scene visits, obtaining releases of confidential information, pre-trial litigation, the use of experts in the collection and analysis of particular kinds of evidence and audio/visual documentation. Principle sources of information in an investigation will include:

- a. information obtained from the client;
- b. information and statements obtained from witnesses;
- c. discovery obtained from the state;
- d. records collected;
- e. physical evidence; and
- f. direct observations.

2. A high quality, independent and exhaustive investigation will include investigation to determine the existence of other evidence or witnesses corroborating or contradicting a particular piece of evidence or information.

3. A high quality, independent and exhaustive investigation will include an investigation of all sources of possible impeachment of defense and prosecution witnesses.

4. Information and evidence obtained in the investigation provided should be properly preserved by memo, written statement, affidavit, or audio/video recordings. The manner in which information is to be obtained and recorded should be specifically approved by lead counsel having regard to any discovery obligations which operate or may be triggered in the case. In particular, the decision to take signed or recorded statements from witnesses should be made in light of the possibility of disclosure of such statements through reciprocal discovery obligations. Documents and physical evidence should be obtained and preserved in a manner designed to allow for its authentication and with regard to the chain of custody.

5. A high quality, exhaustive investigation should be conducted in a manner that permits counsel to effectively impeach potential witnesses, including state actors and records custodians, with statements made during the investigation. Unless defense counsel is prepared to forgo impeachment of a witness by counsel's own testimony as to what the witness stated in an interview or to seek leave to withdraw from the case in order to present such impeaching testimony, defense counsel should avoid interviewing a prospective witness except in the presence of a third person.

6. A written record should be kept of all investigative activity on a case, including all record requests and responses and attempts to locate and interview witnesses, whether successful or unsuccessful. The written record should be sufficient to allow counsel to identify and prove, if necessary, when, where and under what circumstances each piece of information or evidence was obtained. The written record should also be sufficient to allow counsel to identify

and prove that the investigation disclosed an absence of relevant information or evidence, for example, where a record custodian denies possession of relevant records or a witness denies knowledge of a relevant fact.

7. Counsel should conduct a high quality, exhaustive investigation of matters relevant to the guilt and sentencing phases, bearing in mind at all times the relevance of all information sought and obtained to each phase of the trial. Such an investigation shall extend beyond the particular client and the particular offense charged and include an investigation of:

- a. other charged or uncharged bad acts that may be alleged directly or as impeachment;
- b. any co-defendant or alleged co-conspirator;
- c. any alternate suspects;
- d. any victim or victims;
- e. relevant law enforcement personnel and agencies; and
- f. forensic and other experts involved in the case.

8. Considerations in respect of particular sources of information will include the following:

a. interviews with the client should be conducted in accordance with performance standard 2121. In particular, counsel should be conscious of the need for trauma-informed and age and developmentally appropriate interviews, multiple interviews, a relationship of trust and confidence with the client and for interviews on sensitive matters to be conducted by team members with appropriate skill and experience in conducting such interviews;

b. when interviewing witnesses, live witness interviews are almost always to be preferred and telephone interviews will rarely be appropriate. Barring exceptional circumstances, counsel should seek out and interview all potential witnesses including, but not limited to:

- i. eyewitnesses or other witnesses potentially having knowledge of events surrounding the alleged offense itself including the involvement of co-defendants, or alternate suspects;
- ii. potential alibi witnesses;
- iii. members of the client's immediate and extended family;
- iv. neighbors, friends and acquaintances who knew the client or his family throughout the various stages of his life;
- v. persons familiar with the communities where the client and the client's family live and have lived;
- vi. former teachers, coaches, clergy, employers, co-workers, social service providers, and doctors;
- vii. correctional, probation or parole officers;
- viii. witnesses to events other than the offense charged that may prove relevant to any affirmative defense or may be relied upon by the prosecution in its case in chief or in rebuttal of the defense case; and
- ix. government experts who have performed the examinations, tests, or experiments;

c. discovery should be conducted in accordance with performance standard 2131.F;

d. counsel should be familiar with and utilize lawful avenues to compel the production of relevant records beyond formal discovery or compulsory process, including, the Louisiana Public Records Act, the Freedom of Information Act, statutory entitlements to records such as medical

treatment, military service, Social Security, social services, correctional and educational records. Counsel should also be familiar with and utilize avenues to obtain records through voluntary release and publicly available sources including web based searches and social media;

e. counsel should strive to obtain records by means least likely to alert the prosecution to investigative steps being taken by the defense or the content of the records being obtained;

f. where appropriate, counsel should seek releases or court orders to obtain necessary confidential information about the client, co-defendant(s), witness(es), alternate suspect(s), or victim(s) that is in the possession of third parties. Counsel should be aware of privacy laws and procedural requirements governing disclosure of the type of confidential information being sought;

g. unless strategic considerations dictate otherwise, counsel should ensure that all requests, whether by compulsory process, public records law, or other specific statutory procedures, are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with such requests and must maintain a system for tracking requests that have been made: following up on requests; triggering enforcement action where requests are not complied with; documenting where responses have been received; and, identifying which documents have been received in response to which requests and on what date;

h. counsel should obtain all available information from the client's court files. Counsel should obtain copies of the client's prior court file(s), and the court files of other relevant persons. Counsel should also obtain the files from the relevant law enforcement and prosecuting agencies to the extent available;

i. counsel should independently check the criminal records for both government and defense witnesses, and obtain a certified copy of all judgments of conviction for government witnesses, for possible use at trial for impeachment purposes.

9. Counsel should move promptly to ensure that all physical evidence favorable to the client is preserved, including seeking a protective court order to prevent destruction or alteration of evidence. Counsel should make a prompt request to the police or investigative agency for access to any physical evidence or expert reports relevant to the case. Counsel should examine and document the condition of any such physical evidence well in advance of trial. With the assistance of appropriate experts, counsel should reexamine all of the government's material forensic evidence, and conduct appropriate analyses of all other available forensic evidence. Counsel should investigate not only the accuracy of the results of any forensic testing but also the legitimacy of the methods used to conduct the testing and the qualifications of those responsible for the testing.

10. Counsel should take full advantage of the direct observation of relevant documents, objects, places and events by defense team members, experts and others.

11. Counsel should attempt to view the scenes of the alleged offense and other relevant events as soon as possible after counsel is assigned. The visit to any relevant scene

should include visiting under circumstances as similar as possible to those existing at the time of the alleged incident (e.g., weather, time of day, and lighting conditions). Counsel should extensively, precisely and accurately document the condition of any relevant scene using the most appropriate and effective means, including, audio-visual recordings, diagrams, charts, measurements and descriptive memoranda. The condition of the scenes should always be documented in a manner that will permit counsel to identify and prove the condition of the scenes without personally becoming a witness. Where appropriate, counsel should obtain independently prepared documentation of the condition of the scenes, such as, maps, charts, property records, contemporaneous audio-visual recordings conducted by media, security cameras or law enforcement.

12. Counsel should exercise the defendant's right to inspect, copy, examine, test scientifically, photograph, or otherwise reproduce books, papers, documents, photographs, tangible objects, buildings, places, or copies or portions thereof, which are within the possession, custody, or control of the state.

13. Counsel for a client with one or more co-defendants should attend hearings of co-defendants, even if the issue at stake does not seem directly relevant to the client. Counsel should be particularly interested in discovering the strength of the prosecution's case against the co-defendant and the similarities and differences between a co-defendant's defense and the client's.

14. Counsel should also attend potentially relevant hearings involving state or defense witnesses.

C. Duty of Counsel to Conduct Sentencing Phase Investigation

1. Counsel should lead the defense team in a structured and supervised mitigation investigation where counsel is coordinating and, to the extent possible, integrating the strategy for sentencing with the guilt phase strategy. In doing so, counsel must ensure the defense team is adequately supported by a mitigation expert in accordance with performance standard 2115, Assembling the Defense Team.

2. Despite the integration of the two phases of the trial, counsel should be alert to the different significance of items of evidence in the two phases and direct the investigation of the evidence for the sentencing phase accordingly. Where evidence is relevant to both phases, counsel should not limit the investigation to guilt phase issues, but should further develop the mitigating evidence into a compelling case for the sentencing phase. All information obtained in the guilt phase investigation should be assessed for its significance to sentencing and where possible the guilt phase theory should reflect this assessment. Counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment and conduct the investigation and development of evidence accordingly.

3. Counsel should direct the investigation of mitigating information as early as possible in the case. Mitigation investigation may affect many aspects of the case including the investigation of guilt phase defenses, charging decisions and related advocacy, motion practice, decisions about needs for expert evaluations, client relations and communication and plea negotiations.

4. Counsel has an ongoing duty to conduct a high quality, independent and exhaustive investigation of every aspect of the client's character, history, record and any circumstances of the offense, or other factors, which may provide a basis for a sentence less than life without parole.

5. Counsel should investigate all available sources of information and use all appropriate avenues to obtain all potentially relevant information pertaining to the client, his siblings and parents, and other family members extending back at least three generations, including but not limited to:

a. medical history consisting of complete prenatal, pediatric and adult health information (including hospitalizations, mental and physical illness or injury, prenatal and birth trauma, malnutrition, developmental delays, and neurological damage);

b. exposure to harmful substances in utero and in the environment;

c. substance abuse and treatment history;

d. mental health history;

e. history of maltreatment and neglect;

f. trauma history (including exposure to criminal violence, exposure to war, the loss of a loved one, or a natural disaster);

g. experiences of racism or other social or ethnic bias;

h. cultural or religious influences);

i. educational history (including achievement, performance, behavior, activities, special educational needs including cognitive limitations and learning disabilities, and opportunity or lack thereof);

j. social services, welfare, and family court history (including failures of government or social intervention, such as failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities), employment and training history (including skills and performance, and barriers to employability);

k. immigration experience; multi-generational family history, genetic disorders and vulnerabilities, as well as multi-generational patterns of behavior;

l. prior adult and juvenile criminal and correctional experience;

m. religious, gender, sexual orientation, ethnic, racial, cultural and community influences;

n. socio-economic, historical, and political factors.

6. Counsel should not refrain from fully investigating potentially double-edged mitigation and such an investigation should include the full context of the mitigating evidence so as to reduce any potentially negative impact of such evidence at trial or to ensure that the mitigating effect of the evidence outweighs any negatives that may arise from the introduction of the evidence. Counsel should adopt such strategies as are necessary to reduce any potentially negative impact of such evidence, including effective *Voir dire*, motions *in limine*, limiting instructions and the presentation of other evidence designed to maximize the mitigating effect of the evidence and reduce its negative potential.

7. While the client and the client's immediate family can be very important sources of information, they are far from the only potentially significant and powerful sources of information for mitigation evidence, and counsel should not limit the investigation to the client and his or her family.

Further, when evaluating information from the client and the client's family, counsel should consider any impediments each may have to self-reporting or self-reflection.

8. Counsel should exhaustively investigate evidence of any potential aggravating circumstances and other adverse evidence that may be used by the state at sentencing to determine how the evidence may be rebutted or mitigated.

a. Counsel should interview all known state witnesses for the sentencing phase, including any expert witnesses.

b. Counsel's investigation of any prior conviction(s) or delinquency adjudications which may be alleged against the client should include an investigation of any legal basis for overturning the conviction or adjudication, including by appellate, state post-conviction or federal habeas corpus proceedings. Where such a basis exists, counsel should commence or cause to be commenced litigation directed to overturning the conviction. Representation in such proceedings should be determined in accordance with performance standard 2117, scope of representation.

c. Counsel should investigate the facts of any alleged prior bad acts, including any alleged prior convictions or uncharged misconduct or bad acts, the state may seek to introduce in either the guilt or sentencing phases to determine how the evidence may be excluded, rebutted or mitigated.

d. Counsel should actively consider the evidence that the state may be permitted to present in rebuttal of the defense case at sentencing and investigate the evidence to determine how the evidence may be excluded, rebutted or mitigated.

9. Counsel should exhaustively investigate grounds for arguing that the state should be precluded from seeking a life without parole sentence in the case because the client is not the worst offender or the crime is not the worst offense. Grounds might include, for example, age, intellectual disability, mental illness, cognitive impairment, felony murder, guilt as a principal not directly responsible for the death or any other basis for asserting that the client is not the worst offender. When the client is charged with second degree murder, counsel should argue that the state is precluded from seeking a life without parole sentence in the case because the crime is, by definition, not the worst offense.

10. Counsel should direct team members to conduct in-person, face-to-face, one-on-one interviews with the client, the client's family, and other witnesses who are familiar with the client's life, history, or family history or who would support a sentence less than life without parole. Counsel should not fail to seek to interview any of the client's immediate family members. Multiple interviews will be necessary to establish trust, elicit sensitive information and conduct a thorough and reliable life-history investigation. Team members should endeavor to establish the rapport with the client and witnesses that will be necessary to provide the client with a defense in accordance with constitutional guarantees relevant to a Miller sentencing proceeding.

11. Counsel should direct team members to gather documentation to support the testimony of expert and lay witnesses, including, but not limited to, school, medical, employment, criminal and juvenile incarceration, and social service records, in order to provide medical, psychological,

sociological, cultural or other insights into the client's mental and/or emotional state, intellectual capacity, and life history that may explain or diminish the client's culpability for his conduct, demonstrate the absence of aggressive patterns in the client's behavior, exemplify the client's immaturity due to age, explain his inability to appreciate risks and consequences, demonstrate his susceptibility to peer or familial pressure, show the client's capacity for empathy, depict the client's remorse, illustrate the client's desire to function in the world, give a favorable opinion as to the client's capacity for rehabilitation or adaptation to prison, explain possible treatment programs, rebut or explain evidence presented by the prosecutor, or otherwise support a sentence less than life without parole. Records should be reviewed as they are received by the team so that any gaps in the evidence can be discovered and filled, further areas of investigation can be uncovered and pursued, and the defense theory can properly incorporate all available documentary evidence.

12. Counsel should direct team members to provide counsel with documentary evidence of the investigation through the use of such methods as memoranda, genealogies, social history reports, chronologies and reports on relevant subjects including, but not limited to, cultural, socioeconomic, environmental, racial, and religious issues in the client's life. The manner in which information is provided to counsel is determined on a case by case basis, in consultation with counsel, considering jurisdictional practices, discovery rules and policies.

13. Counsel should ensure that the investigation develops available evidence to humanize the client in the eyes of the judge or jury, educate the jury and the court on adolescent development and the biological limitations of the adolescent mind, particularly a child's inability to appreciate risks and consequences, demonstrate the child's diminished culpability, reflect a child's unique capacity for rehabilitation, inherent dignity and value as a human being, demonstrate the client's positives and provide a basis for demonstrating these matters through factually valid narratives and exhibits, rather than merely adjectives. The investigation shall focus more broadly than identifying the causes of any offending conduct.

14. Counsel should endeavor, with the help of a mitigation expert, to create opportunities for the client to learn, grow and change during the pendency of his criminal case. A client's custodial status should not preclude counsel from seeking out such opportunities. Counsel should ensure that the client is receiving a free and appropriate education and any and all other supports and services that he is entitled to under state and federal law (including those provided in prior IEP's) and advocate to remedy any violation these laws.

15. After thorough investigation counsel should begin selecting and preparing witnesses who will testify, who may include but are not limited to:

- a. lay witnesses, or witnesses who are familiar with the client or his family, including but not limited to:
 - i. the client's family and those familiar with the client;

- ii. the client's friends, teachers, classmates, co-workers, and employers, as well as others who are familiar with the client's early and current development and functioning, medical history, environmental history, mental health history, educational history, employment and training history and religious, racial, and cultural experiences and influences upon the client or the client's family;

- iii. social service and treatment providers to the client and the client's family members, including doctors, nurses, other medical staff, social workers, and housing or welfare officials;

- iv. witnesses familiar with the client's prior juvenile and criminal justice and correctional experiences;

- v. former and current neighbors of the client and the client's family, community members, and others familiar with the neighborhoods in which the client lived, including the type of housing, the economic status of the community, the availability of employment and the prevalence of violence;

- vi. former or current correctional officers or employees or others who may be able to testify as to the good conduct, education and growth of the client while in custody;

- b. expert witnesses, or witnesses with specialized training or experience in a particular subject matter. Such experts include, but are not limited to:

- i. medical doctors, psychiatrists, psychologists, toxicologists, pharmacologists, speech language pathologists, social workers and persons with specialized knowledge of adolescent development, medical conditions, mental illnesses and impairments; neurological impairment (brain damage); substance abuse, physical, emotional and sexual maltreatment, trauma and the effects of such factors on the client's development and functioning;

- ii. anthropologists, sociologists and persons with expertise in a particular race, culture, ethnicity, religion;

- iii. persons with specialized knowledge of specific communities or expertise in the effect of environments and neighborhoods upon their inhabitants;

- iv. persons with specialized knowledge about gangs and gang culture;

- v. persons with specialized knowledge and expertise in adolescent development; and

- vi. persons with specialized knowledge of institutional life, either generally or within a specific institution, including prison security and adaptation experts.

16. Counsel should direct team members to aid in preparing and gathering demonstrative evidence, such as photographs, videotapes and physical objects (e.g., trophies, artwork, military medals), and documents that humanize the client or portray him positively, such as certificates of earned awards, favorable press accounts and letters of praise or reference.

D. Securing the Assistance of Experts

1. Counsel should secure the assistance of experts where appropriate for:

- a. an adequate understanding of adolescent development;

b. an adequate understanding of the prosecution's case and the preparation and presentation of the defense including for consultation purposes on areas of specialized knowledge or those lying outside counsel's experience;

c. rebuttal of any portion of the prosecution's case at the guilt or sentencing phase of the trial;

d. investigation of the client's competence to proceed, capacity to make a knowing and intelligent waiver of constitutional rights, mental state at the time of the offense, insanity, and diminished capacity; and

e. obtaining an agreed upon disposition or assisting the client in making a decision to accept or reject a possible agreed upon disposition.

2. An expert is retained to assist counsel in the provision of high quality legal representation. It is counsel's responsibility to provide high quality legal representation and the hiring of an expert, even a well-qualified expert, will not be sufficient to discharge this responsibility. Counsel has a responsibility to support and supervise the work of an expert to ensure that it is adequate and appropriate to the circumstances of the case.

3. When selecting an expert, counsel should consult with other attorneys, mitigation specialists, investigators and experts regarding the strengths and weaknesses of available experts. Counsel should interview experts and examine their credentials and experience before hiring them, including investigating the existence of any significant impeachment that may be offered against the expert and reviewing transcripts of the expert's prior testimony. If counsel discovers that a retained expert is unqualified or his opinions and testimony will be detrimental to the client, counsel should replace the expert and where appropriate, seek other expert advice.

4. When retaining an expert, counsel should provide clear information regarding the rate of payment, reimbursement of expenses, the method of billing, the timing of payment, any cap on professional fees or expenses and any other conditions of the agreement to retain. Counsel should ensure that the expert is familiar with the rules of confidentiality applicable in the circumstances and where appropriate, have the expert sign a confidentiality agreement. Counsel should monitor the hours of work performed and costs incurred by an expert to ensure that the expert does not exceed any pre-approved cap and in order to certify that the expert's use of time and expenses was appropriate in the circumstances.

5. Defense counsel should normally not rely on one expert to testify on a range of subjects, particularly where the witness lacks sufficient expertise in one or more of the areas to be canvassed. Counsel should determine whether an expert is to be used as a consulting expert or may testify in the case and should make appropriate distinctions in communications with the expert and disclosure of the identity and any report of the expert to the state. Counsel should also consider whether a teaching expert is more appropriate for the case to educate the fact-finder or sentencing body. An example of the use of a teaching expert might be to educate the jury or the court on adolescent development. Counsel should use separate experts in the same field for consultation and possible testimony where the circumstances of the case make this necessary or appropriate.

6. Counsel should not simply rely on the opinions of an expert, but should seek to become sufficiently educated in the field to make a reasoned determination as to whether the hired expert is qualified, whether his or her opinion is defensible, whether another expert should be hired, and ultimately whether the area of investigation should be further pursued or abandoned.

7. Experts assisting in investigation and other preparation of the defense should be independent of the court, the state and any co-defendants. Expert work product should be maintained as confidential to the extent allowed by law. Counsel and support staff should use all available sources of information to obtain all necessary information for experts. Counsel should provide an expert with all relevant and necessary information, records, materials, access to witnesses and access to the client within sufficient time to allow the expert to complete a thorough assessment of the material provided, conduct any further investigation, formulate an opinion, communicate the opinion to counsel and be prepared for any testimony. Ordinarily, counsel should not retain an expert until a thorough investigation has been undertaken.

8. Counsel should not seek or rely upon an expert opinion in the absence of an adequate factual investigation of the matters that may inform or support an expert opinion. While an expert may be consulted for guidance even where relatively little factual investigation has been completed, counsel may not rely upon an expert opinion in limiting the scope of investigation, making final decisions about the defense theory or determining the matters to be presented to any court in the absence of a factual investigation sufficiently thorough to ensure that the expert's opinion is fully informed and well supported. Ultimately, it is the responsibility of counsel, not the expert, to ensure that all relevant material is gathered and submitted to the expert for review.

9. Counsel should ensure that any expert who may testify is not exposed to privileged or confidential information beyond that which counsel is prepared to have disclosed by the witness during his or her testimony.

E. Development of a Strategic Plan for the Case

1. During investigation and trial preparation, counsel should develop and continually reassess a strategic plan for the case. This should include the possible defense theories for guilt phase, sentencing phase, agreed upon disposition, litigation of the case and, where appropriate, litigation of the case on appeal and post-conviction review.

2. The defense theory at trial should be an integrated defense theory that will be reinforced by its presentation at both the guilt and sentencing phases and should minimize any inconsistencies between the theories presented at each stage and humanize the client as much as possible.

3. A strategy for the case should be developed from the outset of counsel's involvement in the case and continually updated as the investigation, preparation and litigation of the case proceed. Counsel should not make a final decision on the defense theory to be pursued at trial or foreclose inquiry into any available defense theory until a high quality, exhaustive, independent investigation has been conducted and the available strategic choices fully considered.

4. However, a defense theory for trial should be selected in sufficient time to allow counsel to advance that theory during all phases of the trial, including jury selection, witness preparation, motions, opening statement, presentation of evidence, closing argument and jury instructions. Similarly, the defense theory for the post-verdict, appellate and post-conviction stages of the proceedings should be selected in sufficient time to allow counsel to advance that theory in the substantive filings and hearings in the case.

5. In arriving at a defense theory counsel should weigh the positive aspects of the defense theory and also any negative effect the theory may have, including opening the door to otherwise inadmissible evidence or waiving potentially viable claims or defenses.

6. From the outset of counsel's involvement in the case, a strategic planning document or documents should be produced in writing and maintained in the client's file. The strategic planning document should lay out a comprehensive strategy for both guilt and sentencing phases – detailing the needed fact investigation as well as the plan for collecting and creating mitigating evidence. The plan for both guilt and mitigation investigation should include a timeline for the completion of investigatory tasks. The strategic planning document should be amended as the investigation, preparation and litigation of the case proceed to accurately reflect the current theory or theories. The strategic planning document should be made available to all members of the defense team to assist in coordinating work on the case. However, it should remain privileged and not be shared with non-team members or any team member or expert who may testify.

7. The current strategic planning document and any prior drafts of the document should be maintained in the client's file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1925 (October 2017).

§2129. Agreed-Upon Dispositions

A. Duty of Counsel to Seek an Agreed-Upon Disposition

1. Counsel at every stage of the case have an obligation to take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition.

2. After interviewing the client and developing a thorough knowledge of the law and facts of the case, counsel at every stage of the case should explore with the client the possibility and desirability of reaching an agreed-upon disposition of the charges rather than proceeding to a trial or continuing with proceedings seeking judicial or executive review. In doing so counsel should fully explain the rights that would be waived by a decision to enter a plea or waive further review, the possible collateral consequences, and the legal, factual and contextual considerations that bear upon that decision. Counsel should advise the client with complete candor concerning all aspects of the case, including a candid opinion as to the probable outcome. Counsel should make it clear to the client, with special attention to the age and abilities of the client, that the ultimate decision to enter a plea of guilty or waive further review has to be made by the client.

3. Counsel should keep the client fully informed of any discussions or negotiations for an agreed upon disposition and promptly convey to the client, in an age and developmentally appropriate manner, any offers made by the prosecution for an agreed upon disposition. Counsel shall not accept or reject any agreed-upon disposition without the client's express authorization.

4. Initial refusals by the prosecutor to negotiate should not prevent counsel from making further efforts to negotiate. Despite a client's initial opposition, counsel should engage in an ongoing effort to persuade the client to pursue an agreed upon disposition that is in the client's best interest. Consideration of an agreed upon disposition should focus on the client's interests, the client's needs and the client's perspective.

5. The existence of ongoing negotiations with the prosecution does not in any way diminish the obligations of defense counsel respecting investigation and litigation. Ongoing negotiations should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

B. Formal Advice Regarding Agreed-Upon Disposition

1. Counsel should be aware of, and fully explain to the client in an age and developmentally appropriate manner:

a. the maximum penalty that may be imposed for the charged offense(s) and any possible lesser included or alternative offenses, and any mandatory (minimum) punishment, sentencing enhancements, habitual offender statutes, mandatory consecutive sentence requirements including restitution, fines, assessments and court costs;

b. any collateral consequences of potential penalties less than life without parole including but not limited to forfeiture of assets, deportation or the denial of naturalization or of reentry into the United States, imposition of civil liabilities, loss of parental rights, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, potential federal prosecutions, and the use of the disposition adverse to the client in sentencing phase proceedings of other prosecutions of him, as well as any direct consequences of potential penalties less than life without parole, such as the possibility and likelihood of parole, place of confinement and good-time credits;

c. any registration requirements including sex offender registration and job specific notification requirements;

d. the general range of sentences for similar offenses committed by defendants with similar backgrounds, and the impact of any applicable sentencing guidelines or mandatory sentencing requirements including any possible and likely sentence enhancements or parole consequences;

e. the governing legal regime, including but not limited to whatever choices the client may have as to the fact finder and/or sentence;

- f. available drug rehabilitation programs, psychiatric treatment, and health care;
- g. the possible and likely place of confinement;
- h. credit for pretrial detention;
- i. the effect of good-time credits on the client's release date and how those credits are earned and calculated;
- j. eligibility for correctional programs, work release and conditional leaves;
- k. deferred sentences, conditional discharges and diversion agreements;
- l. probation or suspension of sentence and permissible conditions of probation;
- m. parole and post-prison supervision eligibility, applicable ranges, and likely post-prison supervision conditions; and
- n. possibility of later expungement and sealing of records.

2. Counsel should be completely familiar with, and fully explain to the client in an age and developmentally appropriate manner.

a. Concessions the client may make as part of an agreed upon disposition, including:

- i. to waive trial and plead guilty to particular charges;
- ii. to decline from asserting or litigating any particular pretrial motions; or to forego in whole or in part legal remedies such as appeals, motions for post-conviction relief, and/or parole or clemency applications. However, the client should receive independent legal advice before being asked to waive any future claim of ineffective assistance of counsel;

iii. to proceed to trial on a particular date or within a particular time period;

iv. to enter an agreement regarding future custodial status, such as one to be confined in a more onerous category of institution than would otherwise be the case, or to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs;

v. to provide the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity;

vi. to enter an agreement to permit a judge to perform functions relative to guilt or sentence that would otherwise be performed by a jury or vice versa;

vii. to enter an agreement to engage in or refrain from any particular conduct, as appropriate to the case;

viii. to enter an agreement with the victim's family, which may include matters such as: a meeting between the victim's family and the client, a promise not to publicize or profit from the offense, the issuance or delivery of a public statement of remorse by the client, or restitution; and

ix. to enter agreements such as those described in the above subsections respecting actual or potential charges in another jurisdiction.

b. Benefits the client might obtain from a negotiated settlement, including, but not limited to an agreement:

- i. that life without parole will not be sought;
- ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;

iii. that the client will receive, with the agreement of the court, a specified sentence or sanction or a sentence or sanction within a specified range;

iv. that the client will receive, or the prosecution will recommend, specific benefits concerning the accused's place and/or manner of confinement and/or release on parole and the information concerning the accused's offense and alleged behavior that may be considered in determining the accused's date of release from incarceration;

v. that the client may enter a conditional plea to preserve the right to further contest certain legal issues;

vi. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;

vii. that the client will not be subject to further investigation or prosecution for uncharged alleged or suspected criminal conduct;

viii. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;

ix. that the prosecution will not present certain information, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, or will engage in or refrain from engaging in other actions with regard to sentencing;

x. such as those described in Subsections (1)-(9) respecting actual or potential charges in another jurisdiction.

c. the position of any alleged victim (and victim's family members) with respect to conviction and sentencing. In this regard, counsel should:

i. consider whether interviewing or outreach to an alleged victim (or a victim's family members) is appropriate;

ii. consider to what extent the alleged victim or victims (or a victim's family members) might be involved in the plea negotiations;

iii. be familiar with any rights afforded the alleged victim or victims (and a victim's family members) under La. Const. art I, §25, R.S. 46:1841 et seq., or other applicable law; and

iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

3. In conducting plea negotiations, counsel should be familiar with and should fully explain to the client:

a. the various types of pleas that may be agreed to, including a plea of guilty, a nolo contendere plea in which the client is not required to personally acknowledge his or her guilt (*North Carolina v. Alford*, 400 U.S. 25 (1970)), and a guilty plea conditioned upon reservation of appellate review of pre-plea assignments of non-jurisdictional error (*State v. Crosby*, 338 So.2d 584 (La. 1976));

b. the advantages and disadvantages of each available plea according to the circumstances of the case; and

c. whether any plea agreement is or can be made binding on the court and prison and parole authorities, and whether the client or the state has a right to appeal the

conviction and/or sentence and what would happen if an appeal was successful.

4. In conducting plea negotiations, counsel should become familiar with and fully explain to the client, the practices, policies, and concerns of the particular jurisdiction, judge and prosecuting authority, probation department, the family of the victim and any other persons or entities which may affect the content and likely results of plea negotiations.

5. In conducting plea negotiations counsel should be familiar with and fully explain to the client any ongoing exposure to prosecution in any other jurisdiction for the same or related offending and where possible, seek to fully resolve the client's exposure to prosecution for the offending and any related offending.

C. The Advice and Decision to Enter a Plea of Guilty

1. Subject to considerations of diminished capacity, counsel should abide by the client's decision, after meaningful consultation with counsel, as to a plea to be entered.

2. Counsel should explain, in an age and developmentally appropriate manner, all matters relevant to the plea decision to the extent reasonably necessary to permit the client to make informed decisions regarding the appropriate plea. In particular, counsel should investigate and explain to the client the prospective strengths and weaknesses of the case for the prosecution and defense at both guilt and sentencing and on appellate, post-conviction and habeas corpus review.

3. Counsel should carefully and thoroughly explore the client's understanding of the matters explained including, in particular, the procedural posture of his case, the trial, appellate and post-conviction process, the likelihood of success at trial, the likely disposition at trial and the practical effect of each disposition, the practical effect of each available plea decision and counsel's professional advice on which plea to enter.

4. In providing the client with advice, counsel should refer not only to law but to other considerations such as moral, economic, social and political factors that may be relevant to the client's situation. Counsel may enlist the assistance of others to assist in ensuring that the client is able to make an informed decision having regard to these considerations.

5. Counsel should pursue every reasonable avenue to overcome any barriers to communication and trust in discussing a possible agreed upon disposition. Counsel should take all reasonable steps to ensure that the client's capacity to make a decision in his own best interests is not impaired, for example, by the effects of age and its attendant circumstances, intellectual disability, mental illness, cognitive impairment, language impairment, trauma, family dysfunction, third party interference or conditions of confinement.

6. The considerations applicable to the advice and decision to enter a plea of guilty will also apply to the decision to enter into an agreed disposition in an appellate or post-conviction posture.

D. Entering the Negotiated Plea before the Court

1. Notwithstanding any earlier discussions with the client, prior to the entry of the plea, counsel should meet

with the client in a confidential setting that fosters full communication and:

a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;

b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions and collateral consequences the client will be exposed to by entering a plea;

c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense;

d. make certain that if the plea is a non-negotiated plea, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court;

e. ensure that the client is mentally competent and psychologically capable of making a decision to enter a plea of guilty;

f. be satisfied that the client admits guilt or believes there is a substantial likelihood of conviction at trial, and believes that it is in his or her best interests to plead guilty under the plea agreement rather than risk the consequence of conviction after trial; and

g. be satisfied that the state would likely be able to prove the charge(s) against the client at trial.

2. When entering the plea, counsel should make sure that the full content and conditions of the plea agreement are placed on the record before the court.

3. Subsequent to the acceptance of the plea, counsel should review and explain the plea proceedings to the client, and respond to any questions or concerns the client may have.

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HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1931 (October 2017).

§2131. Pre-Trial Litigation

A. Obligations Regarding court Hearings

1. Counsel should prepare for and attend all court proceedings involving the client and/or the client's case. Counsel should be present, alert and focused on the client's best interests during all stages of the court proceedings.

2. As soon as possible after entry of counsel into the case, counsel should provide general advice to the client on how court proceedings will be conducted, how the client should conduct himself in court settings, how the client should communicate with counsel and others in the court setting and how the client should react to events in court. Counsel should advise the client on appropriate demeanor and presentation in court and take reasonable steps to assist the client in maintaining an appropriate demeanor and presentation. Counsel should plan, with the client, the most convenient system for conferring throughout any court proceeding.

3. Prior to any court hearing, counsel should explain to the client, in an age and developmentally appropriate manner, what is expected to happen before, during and after each hearing. Where the client may be directly addressed by

the court or asked to speak on the record, counsel should warn the client in advance and both advise the client on how to proceed and prepare the client for any potential colloquy or testimony. Counsel should advise the client that he has the right to confer with counsel before answering any question, even if it means interrupting the proceedings.

4. Counsel should take all necessary steps to overcome any barriers to communication or understanding by the client during court proceedings, including the use of interpreters, slowing the rate of proceedings, taking adequate breaks, using age and developmentally appropriate language and explaining proceedings to the client during the hearing.

5. Counsel should document in the client's file a summary of all pertinent information arising from each court hearing and take particular care to memorialize communications and events that will not appear in the court record or transcript.

6. Counsel should ensure that the court minutes and any transcript accurately reflect the orders, statements and events occurring in court and that all exhibits have been marked, identified and placed into the record.

B. Obligations of Counsel Following Arrest

1. Counsel or a representative of counsel have an obligation to meet with incarcerated clients for an initial interview within 24 hours of counsel's initial entry into the case, barring exceptional circumstances, and shall take other prompt action necessary to provide high-quality legal representation including:

a. invoking the protections of appropriate constitutional provisions, federal and state laws, statutory provisions, and court rules on behalf of a client, and revoking any waivers of these protections purportedly given by the client, as soon as practicable by correspondence and a notice of appearance or other pleading filed with the State and court. More specifically, counsel should communicate in an appropriate manner with both the client and the government regarding the protection of the client's rights against self-incrimination, to the effective assistance of counsel, and to preservation of the attorney-client privilege and similar safeguards. Counsel at all stages of the case should re-advise the client and the government regarding these matters as appropriate and assert the client's right to counsel at any post-arrest procedure such as a line-up, medical evaluation, psychological evaluation, physical testing or the taking of a forensic sample;

b. counsel shall represent the client at the continued custody hearing in order to contest transfer to adult court in accordance with performance standard 2125;

c. where possible, ensuring that counsel shall represent the client at a first appearance hearing conducted under La. C. Cr. P. art. 230.1 in order to contest transfer to adult court, contest probable cause for a client arrested without an arrest warrant, to seek bail on favorable terms (after taking into consideration the adverse impact, if any, such efforts may have upon exercising the client's right to a full bond hearing at a later date), and will invoke constitutional and statutory protections on behalf of the client, and otherwise advocate for the interests of the client.

2. Prior to indictment, counsel should take steps to secure the pretrial release of the client where such steps will not jeopardize the client's ability to defend against any later

indictment. Where the client is unable to obtain pretrial release, counsel should take all reasonable steps to identify and ensure that the client's medical, mental health, education and security needs are being met and that the jail is in full compliance with PREA.

a. Counsel should consider requesting the client be held in a facility intended for juveniles rather than an adult jail.

b. Counsel shall advocate for the client to be provided a free and appropriate educational plan as required by the PREA, including special education as appropriate. Maintenance of the client's education may result in the development of positive mitigation evidence, and may be beneficial to the client's mental health.

c. Counsel shall consult with the client about requesting sight and sound isolation from adults, taking reasonable steps to explain the potential positive and negative consequences of such isolation.

3. While counsel should only seek to submit evidence for the client to the grand jury in exceptional cases, counsel should consider in each particular case whether such an application is appropriate in the circumstances.

4. Where counsel is assigned to the case of a defendant arrested outside of Louisiana, counsel should immediately contact any attorney representing the client in the jurisdiction of arrest to share information as appropriate and coordinate the representation of the client. Where the client is not represented in the jurisdiction of arrest, counsel should take all reasonable steps to arrange effective representation for him. Ordinarily, counsel should travel to the jurisdiction of arrest to consult with and provide legal advice to the client with respect to the Louisiana case and the ramifications for the case of waiving or contesting extradition. Counsel should conduct the initial interviews with the client, the assertion and protection of the client's rights and the investigation of the case, including the circumstances of the arrest, in accordance with these standards, regardless of whether the client is being held in the jurisdiction of arrest or has been extradited to Louisiana. Counsel should not wait for the client to be extradited before commencing active representation of the client.

C. Counsel's Duties at the Preliminary Hearing

1. In the absence of exceptional circumstances, counsel should move for a preliminary hearing in all cases in a timely fashion, having regard to prosecution practices in the particular jurisdiction and the likely timing of any indictment. Counsel shall move for a preliminary hearing even when a continued custody hearing has been held and even where counsel represented the client at a continued custody hearing. If counsel is denied a preliminary hearing, counsel shall move for an adversarial bond hearing where counsel shall ensure his ability to examine witnesses.

2. In the event the client is subject to the jurisdiction of the juvenile court, in the absence of exceptional circumstances, counsel shall enforce the client's right to a continued custody hearing. Counsel should consider the strategic benefit of negotiating or requesting a continuance of the continued custody hearing, having regard for prosecution practices in the particular jurisdiction, the opportunity to conduct pre-hearing investigation, the opportunity to negotiate retaining juvenile jurisdiction over

the case and the likely timing of any indictment. A continued custody hearing shall not substitute for a preliminary hearing.

3. While the primary function of the preliminary hearing is to ensure that probable cause exists to hold the client in custody or under bond obligation, the hearing may provide collateral advantages for the client by:

- a. creating a transcript of cross-examination of state's witnesses for use as an impeachment tool;
- b. preserving testimony favorable to the client of a witness who may not appear at trial;
- c. providing discovery of the state's case;
- d. allowing for more effective and earlier preparation of a defense; and
- e. persuading the prosecution to refuse the charges or accept lesser charges for prosecution.

4. Counsel should conduct as thorough an investigation of the case as is possible in the time allowed before the preliminary hearing to best inform strategic decisions regarding the subpoenaing of witnesses and the scope and nature of cross-examination. Counsel should fully exercise the rights to subpoena and cross-examine witnesses to seek a favorable outcome at the preliminary hearing and maximize the collateral advantages to the client of the proceedings.

5. In preparing for the preliminary hearing, the attorney should be familiar with:

- a. the elements of each of the offenses alleged;
- b. the requirements for establishing probable cause;
- c. factual information which is available concerning the existence of or lack of probable cause;
- d. the tactics of full or partial cross-examination, including the potential impact on the admissibility of any witness' testimony if they are later unavailable for trial and how to respond to any objection on discovery grounds by showing how the question is relevant to probable cause;
- e. additional factual information and impeachment evidence that could be discovered by counsel during the hearing; and
- f. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings.

6. Counsel should not present defense evidence, especially the client's testimony, except in unusual circumstances where there is a sound tactical reason that overcomes the inadvisability of disclosing the defense case at this stage.

D. Counsel's Duties at Arraignment

1. Where possible, qualified counsel should be assigned prior to arraignment and should represent the client at arraignment.

2. Counsel should preserve the client's rights by entering a plea of not guilty in all but the most extraordinary circumstances where a sound tactical reason exists for not doing so.

3. If not already done, counsel should assert the client's Fifth and Sixth Amendment rights to silence and to counsel and should review with the client the need to remain silent.

4. If not already done, counsel should take all reasonable steps to identify and ensure that the client's

medical, mental health educational and security needs are being met.

5. Counsel should move for discovery at or immediately following arraignment and shall reserve the right to file all other pretrial motions in accordance with the rules of criminal procedure. See performance standard 2131.F, formal and informal discovery.

E. Counsel's Duty in Pretrial Release Proceedings

1. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release pursuant to C.Cr.P. art. 331, and, where appropriate, to make a proposal concerning conditions of release.

2. Counsel should carefully consider the strategic benefits or risks of making an application for bail, including the timing of any application and any collateral benefits or risks that may be associated with a bail application.

3. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

4. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets. Where appropriate, counsel should advise the client and others acting in his or her behalf how to properly post such assets.

5. Absent extraordinary circumstances, counsel shall advocate for the client to be held in the juvenile detention center. Whether the client is in juvenile or adult custody, counsel shall advocate for PREA and, where appropriate, IDEA compliant conditions of confinement. See performance standard 2131.B, obligation of counsel following arrest.

F. Formal and Informal Discovery

1. Counsel should pursue discovery, including filing a motion for discovery, a bill of particulars and conducting appropriate interviews. Counsel has a duty to pursue, as soon as practicable, discovery procedures provided by statute, by the rules of the jurisdiction, and to pursue such informal discovery methods as may be available to supplement the factual investigation of the case.

2. In considering discovery requests, counsel should take into account that such requests may trigger reciprocal discovery obligations. Counsel shall be familiar with the rules regarding reciprocal discovery and be aware of any potential obligations and time limits regarding reciprocal discovery.

3. Counsel should consider seeking discovery, at a minimum, of the following:

- a. the precise statutory provision relied upon for the charge or indictment, including any aggravating factors that may be relied upon by the prosecution to establish first degree murder under R.S. 14:30;

- b. any aggravating circumstances that may be relied upon by the prosecution in support of a sentence of life without parole;

- c. any evidence that may be relied upon by the prosecution in support of the argument that the client is the "worst offender";

d. any written, recorded or oral statement, confession or response to interrogation made by or attributed to the client. Such discovery should, where possible, include a copy of any such confession or statement, the substance of any oral confession or statement and details as to when, where and to whom the confession or statement was made;

e. any record of the client's arrests and convictions and those of potential witnesses;

f. any information, document or tangible thing favorable to the client on the issues of guilt or punishment, including information relevant for impeachment purposes;

g. any documents or tangible evidence the state intends to use as evidence at trial, including but not limited to: all books, papers, documents, data, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;

h. any documents or tangible evidence obtained from or belonging to the client, including a list of all items seized from the client or from any place under the client's dominion;

i. any results or reports and underlying data of relevant physical or mental examinations, including medical records of the victim where relevant, and of scientific tests, experiments and comparisons, or copies thereof, intended for use at trial or favorable to the client on the issues of guilt or punishment;

j. one half of any DNA sample taken from the client;

k. any successful or unsuccessful out-of-court identification procedures undertaken or attempted;

l. any search warrant applications, including any affidavit in support, search warrant and return on search warrant;

m. any other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase;

n. any other adjudicated or unadjudicated conduct that may be relied upon by the prosecution in the sentencing phase;

o. any victim impact information that may be relied upon by the prosecution in the sentencing phase, including any information favorable to the client regarding the victim or victim impact;

p. any statements of prosecution witnesses, though counsel should be particularly sensitive to the effect of any reciprocal discovery obligation triggered by such discovery;

q. any statements of co-conspirators;

r. any confessions and inculpatory statements of co-defendant(s) intended to be used at trial, and any exculpatory statements; and

s. any understanding or agreement, implicit or explicit, between any state actor and any witness as to consideration or potential favors in exchange for testimony, including any memorandum of understanding with a prisoner who may seek a sentence reduction.

4. Counsel should ensure that discovery requests extend to information and material in the possession of others acting on the government's behalf in the case, including law enforcement. This is particularly important where the investigation involved more than one law enforcement agency or law enforcement personnel from multiple jurisdictions.

5. Counsel should take all available steps to ensure that prosecutors comply with their ethical obligations to disclose favorable information contained in Rule 3.8(d) of the Louisiana Rules of Professional Conduct.

6. Counsel should ensure that discovery requests extend to any discoverable material contained in memoranda or other internal state documents made by the district attorney or by agents of the state in connection with the investigation or prosecution of the case; or of statements made by witnesses or prospective witnesses, other than the client, to the district attorney, or to agents of the state.

7. Counsel should not limit discovery requests to those matters the law clearly requires the prosecution to disclose but should also request and seek to obtain other relevant information and material.

8. When appropriate, counsel should request open file discovery. Where open file discovery is granted, counsel should ensure that the full nature, extent and limitations of the open file discovery policy are placed on the court record. Where inspection of prosecution or law enforcement files is permitted, counsel should make a detailed and complete list of the materials reviewed and file this list into the court record.

9. Counsel should seek the timely production and preservation of discoverable information, documents or tangible things likely to become unavailable unless special measures are taken. If counsel believes the state may destroy or consume in testing evidence that is significant to the case (e.g., rough notes of law enforcement interviews, 911 tapes, drugs, or biological or forensic evidence like blood or urine samples), counsel should also file a motion to preserve evidence in the event that it is or may become discoverable.

10. Counsel should establish a thorough and reliable system of documenting all requests for discovery and all items provided in discovery, including the date of request and the date of receipt. This system should allow counsel to identify and prove, if necessary, the source of all information, documents and material received in discovery, when they were provided and under what circumstances. This system should allow counsel to identify and prove, where necessary, that any particular piece of information, document or material had not previously been provided in discovery.

11. Counsel should scrupulously examine all material received as soon as possible to identify and document the material received, to identify any materials that may be missing, illegible or unusable and to determine further areas of investigation or discovery. Where access is given to documents, objects or other materials counsel should promptly and scrupulously conduct an inspection of these items and carefully document the condition and contents of the items, using photographic or audio-visual means when appropriate. Expert assistance should be utilized where appropriate to ensure that a full and informed inspection of the items is conducted. Where a reproduction of an original document or item is provided (including photocopies, transcripts, photographs, audio or video depictions) counsel should promptly and scrupulously inspect and document the original items in order to ensure the accuracy of the reproduction provided and to identify any additional

information available from inspection of the original that may not be available from the reproduction.

12. Counsel should file with the court an inventory of all materials received or inspected in discovery. This inventory should be sufficiently detailed to identify precisely each piece of information, document or thing received including, for example, how many pages a document contained and any pages that may have been missing.

13. Unless strong strategic considerations dictate otherwise, counsel should ensure that all discovery requests are made in a form that will allow counsel to enforce the requests to the extent possible and to seek the imposition of sanctions for non-compliance. Counsel should seek prompt compliance with discovery demands.

14. Where the state asserts that requested information is not discoverable, counsel should, where appropriate, request an in camera inspection of the material and seek to have the withheld material preserved in the record under seal. Counsel should recognize that a judge undertaking in camera review may not have sufficient understanding of the possible basis for disclosure, especially the ways in which information may be favorable to defense in the particular case. Where in camera review is undertaken, counsel should take all available steps to ensure that the judge is sufficiently informed to make an accurate assessment of the information, including through the use of ex parte and under seal proffer, where appropriate and permissible.

15. Counsel should timely comply with requirements governing disclosure of evidence by the defendant and notice of defenses and expert witnesses. Counsel also should be aware of the possible sanctions for failure to comply with those requirements. Unless justified by strategic considerations, counsel should not disclose any matter or thing not required by law and should seek to limit both the scope and timing of any defense discovery. Counsel should take all reasonable steps to prevent the prosecution from obtaining private or confidential information concerning the client, including matters such as medical, mental health, social services, juvenile court, educational and financial information. Counsel should be wary of discussing any confidential matters over the recorded jail phones.

16. Counsel should understand the law governing the prosecution's power to require a defendant to provide non-testimonial evidence (such as handwriting exemplars, lineups, photo show-ups, voice identifications, and physical specimens like blood, semen, and urine), the circumstances in which a defendant may refuse to do so, the extent to which counsel may participate in the proceedings, and the required preservation of the record. Counsel should raise appropriate objections to requests for non-testimonial evidence and should insist on appropriate safeguards when these procedures are to occur. Counsel should also prepare the client for participation in such procedures. Counsel should accompany the client, insist that the police not require the client to answer any questions and, if necessary, return to court before complying with the order.

G. The Duty to File Pretrial Motions

1. Counsel at every stage of the case, exercising professional judgment in accordance with these standards should consider all legal and factual claims potentially

available, including all good faith arguments for an extension, modification or reversal of existing law. Counsel should thoroughly investigate the basis for each potential claim before reaching a conclusion as to whether it should be asserted.

2. Counsel should give consideration to the full range of motions and other pleadings available and pertinent to a JLWOP case when determining the motions to be filed in the particular case, including motions to proceed ex parte. Counsel should file motions tailored to the individual case that provide the court with all necessary information, rather than pro forma or boilerplate motions. The requirement that counsel file motions tailored to the individual case is not a prohibition against also filing motions that raise previously identified legal issues, nor is it a prohibition on the filing of boilerplate motions where no tailoring of the motion is necessary or appropriate in the case.

3. The decision to file pretrial motions and memoranda should be made after considering the applicable law in light of the circumstances of each case. Each potential claim should be evaluated in light of:

- a. the unique characteristics of juvenile law and practice;
- b. the unique characteristics of a sentencing hearing for a juvenile facing a possible sentence of life without parole;
- c. the potential impact of any pretrial motion or ruling on the strategy for the sentencing phase;
- d. the near certainty that all available avenues of appellate and post-conviction relief will be pursued in the event of conviction and imposition of a life without parole sentence;
- e. the importance of protecting the client's rights against later contentions by the government that the claim has been waived, defaulted, not exhausted, or otherwise forfeited;
- f. the significant limitations placed upon factual development of claims in subsequent stages of the case; and
- g. any other professionally appropriate costs and benefits to the assertion of the claim.

4. Among the issues that counsel should consider addressing in pretrial motions practice are:

- a. matters potentially developed in early stages of investigation and discovery, including:
 - i. the pretrial custody of the accused, including the appropriate bond amount and the need for an adversarial hearing to explore the same;
 - ii. the need to divest the criminal court of jurisdiction or the improper or unwarranted transfer of the client to criminal court;
 - iii. the need for appropriate, ongoing and confidential access to the client by counsel, investigators, mitigation specialists and experts;
 - iv. the need for a preliminary hearing, including a post-indictment preliminary hearing;
 - v. the statutory, constitutional and ethical discovery obligations including the reciprocal discovery obligations of the defense;
 - vi. the need for and adequacy of a bill of particulars;

vii. the need for and adequacy of notice of other crimes or bad acts to be admitted in the guilt or sentencing phase of trial;

viii. the need for and adequacy of notice of any victim impact evidence;

ix. the preservation of and provision of unimpeded access to evidence and witnesses;

x. the use of compulsory process to complete an adequate investigation, including the possible use of special process servers;

xi. the prevention or modification of any investigative or procedural step proposed by the state that violates any right, duty or privilege arising out of federal, state or local law or is contrary to the interests of the client;

xii. access to experts or resources required by, among other things, these standards which may be denied to an accused because of his indigence;

xiii. the client's right to a speedy trial;

xiv. the client's right to a continuance in order to adequately prepare his or her case;

xv. the need for a change of venue;

xvi. the need to obtain a gag order;

xvii. the need to receive notice of and be present at hearings involving co-defendants and to receive copies of pleadings filed by any co-defendant;

xviii. the dismissal of a charge on double jeopardy grounds;

xix. the recusal of the trial judge, the prosecutor and/or prosecutor's office;

xx. competency of the client;

xxi. intellectual disability;

xxii. the nature, scope and circumstances of any testing or assessment of the client;

xxiii. extension of any motions filing deadline or the entitlement to file motions after the expiration of a motions deadline; and

xxiv. requiring the state to respond to motions in writing;

b. matters likely to be more fully developed after comprehensive discovery, including:

i. the constitutionality of the implicated statute or statutes;

ii. the constitutionality of a juvenile life without parole sentence generally, as applied in Louisiana, and as applied to the client's case;

iii. the potential defects in the grand jury composition, the charging process or the allotment;

iv. the sufficiency of the charging document under all applicable statutory and constitutional provisions, as well as other defects in the charging document such as surplusage in the document which may be prejudicial;

v. any basis upon which the indictment may be quashed;

vi. the adequacy and constitutionality of any aggravating factors or circumstances;

vii. the propriety and prejudice of any joinder of charges or defendants in the charging document;

viii. the permissible scope and nature of evidence that may be offered by the prosecution in aggravation of sentence or by the defense in mitigation of sentence;

ix. abuse of prosecutorial discretion in seeking a sentence of life without parole;

x. the suppression of evidence or statements gathered or presented in violation of the Fourth, Fifth or Sixth Amendments to the United States Constitution, or corresponding state constitutional and statutory provisions with special attention to the particular issues raised by the client's age and attendant circumstances;

xi. suppression of evidence or statements gathered in violation of any right, duty or privilege arising out of state or local law with special attention to the particular issues raised by the client's age and attendant circumstances;

xii. the admissibility of evidence of other crimes, wrongs or acts that may be relied upon by the prosecution in the guilt phase with special attention to the particular issues raised by the client's age and attendant circumstances;

xiii. the admissibility of any unrelated criminal conduct that may be relied upon by the prosecution in the sentencing phase with special attention to the particular issues raised by the client's age and attendant circumstances;

xiv. the suppression of a prior conviction obtained in violation of the defendant's right to counsel;

xv. notices of affirmative defenses with all required information included; and

xvi. notices necessary to entitle the client to present particular forms of evidence at trial, such as alibi notice and notice of intention to rely upon mental health evidence;

c. matters likely arising later in pretrial litigation and in anticipation of trial, including:

i. *in limine* motions to exclude evidence that is inadmissible as a result of a lack of relevance, probative force being outweighed by prejudicial effect, the lack of a necessary foundation, failure to satisfy the threshold for expert evidence or for other reasons;

ii. the constitutionality of the scope of and any limitations placed upon any affirmative defense or the use of a particular form of favorable evidence;

iii. the competency of a particular witness or class of witnesses;

iv. the nature and scope of victim impact evidence;

v. *in limine* motions to prevent prosecutorial misconduct or motions to halt or mitigate the effects of prosecutorial misconduct;

vi. matters of trial evidence or procedure at either phase of the trial which may be appropriately litigated by means of a pretrial motion *in limine*;

vii. matters of trial or courtroom procedure, including: recordation of all proceedings, including bench and chambers conferences; timing and duration of hearings; prohibition of *ex parte* communications; manner of objections; ensuring the client's presence at hearings; medication of the client; avoiding prejudice arising from any security measures;

viii. challenges to the process of establishing the jury venire;

ix. the desirability of jury determination of sentence;

x. the use of a jury questionnaire;

xi. the manner and scope of *Voir dire*, the use of cause and peremptory challenges and the management of sequestration;

xii. the desirability and circumstances of the jury viewing any scene; and

xiii. the instructions to be delivered at guilt and sentencing;

d. counsel should withdraw or decide not to file a motion only after careful consideration, and only after determining whether the filing of a motion may be necessary to protect the client's rights, including later claims of waiver or procedural default. In making this decision, counsel should remember that a motion has many objectives in addition to the ultimate relief requested by the motion. Counsel thus should consider whether:

i. the time deadline for filing pretrial motions warrants filing a motion to preserve the client's rights, pending the results of further investigation;

ii. changes in the governing law might occur after the filing deadline which could enhance the likelihood that relief ought to be granted; and

iii. later changes in the strategic and tactical posture of the defense case may occur which affect the significance of potential pretrial motions.

5. Counsel should timely file motions according to the applicable rules and caselaw, provide notice of an intention to file more motions where appropriate, reserve the right to supplement motions once discovery has been completed, offer good cause and seek to file appropriate motions out of time and seek to file necessary and appropriate motions out of time even where good cause for delay is not available. If counsel needs more time to file a motion, counsel should request more time.

6. Counsel should give careful consideration before joining in co-defendants' motions and should avoid any possibility that the client will be deemed to have joined in a co-defendant's motions without a knowing, affirmative adoption of the motions by counsel.

7. As a part of the strategic plan for the case, counsel should maintain a document describing the litigation theory in the case, including a list of all motions considered for filing and the reason for filing or not filing each motion considered. The litigation theory document should also detail the timing and disposition of all motions. The current litigation theory document and any prior drafts of the document should be maintained in the client's file. See performance standard 2127(E), development of a strategic plan for the case.

H. Preparing, Filing, and Arguing Pretrial Motions

1. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules and should succinctly inform the court of the authority relied upon. Counsel should seek an evidentiary hearing for any motion in which factual findings or the presentation of evidence would be in the client's interests. Where an evidentiary hearing is denied, counsel should make a proffer of the proposed evidence.

2. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

a. factual investigation and discovery as well as careful research of appropriate case law relevant to the claim advanced;

b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all witnesses with information pertinent to the instant or future proceedings;

c. full understanding of the burdens of proof, evidentiary principles and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client and other defense witnesses testify;

d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial;

e. obtaining the assistance of expert witnesses where appropriate and necessary;

f. careful preparation of any witnesses who are called, especially the client;

g. careful preparation for and conduct of examination or cross-examination of any witness, having particular regard to the possibility that the state may later seek to rely upon the transcript of the evidence should the witness become unavailable;

h. consideration of any collateral benefits or disadvantages that may arise from the evidentiary hearing;

i. obtaining stipulation of facts by and between counsel, where appropriate; and

j. preparation and submission of a memorandum of law where appropriate.

3. When asserting a legal claim, counsel should present the claim as forcefully as possible, tailoring the presentation to the particular facts and circumstances in the client's case and the applicable law in the particular jurisdiction. Counsel should pursue good faith arguments for an extension, modification or reversal of existing law.

4. Counsel should ensure that a full record is made of all legal proceedings in connection with the claim. If a hearing on a pretrial motion is held in advance of trial, counsel should obtain the transcript of the hearing where it may be of assistance in preparation for or use at trial.

5. In filing, scheduling, contesting or consenting to any pretrial motion, including scheduling orders, counsel should be aware of the effect it might have upon the client's statutory and constitutional speedy trial rights.

I. Continuing Duty to File Motions

1. Counsel at all stages of the case should be prepared to raise during subsequent proceedings any issue which is appropriately raised at an earlier time or stage, but could not have been so raised because the facts supporting the motion were unknown or not reasonably available.

2. Further, counsel should be prepared to renew a motion or supplement claims previously made with additional factual or legal information if new supporting information is disclosed or made available in later proceedings, discovery or investigation.

3. Where counsel has failed to timely provide a required notice or file a motion, counsel should seek to file the motion or notice out of time regardless of whether good cause exists for the earlier failure to file and be prepared to present any argument for good cause that is available. Where a court bars a notice or motion as untimely, counsel should ensure that a copy of the notice or motion is maintained in the record and available for any subsequent review.

4. Counsel should also renew pretrial motions and object to the admission of challenged evidence at trial as necessary to preserve the motions and objections for appellate review.

5. Counsel shall have the discretion to assist incarcerated clients seeking redress of institutional grievances or responding to institutional proceedings and should do so where the resolution of the grievance or proceeding is likely to be of significance in the JLWOP proceeding.

J. Duty to File and Respond to Supervisory Writ Applications

1. Where appropriate, counsel should make application for supervisory writs in the Circuit Court of Appeal or the Louisiana Supreme Court following an adverse district court ruling or failure to rule. Counsel should give specific consideration to: the extent to which relief is more likely in an interlocutory posture or after a final decision on the merits of the case; the extent of prejudice from the ruling of the district court and the likely ability to demonstrate that prejudice following a final decision on the merits of the case; the impact of the district court's current ruling on the conduct of the defense in the absence of intervention by a reviewing court; the impact of a ruling by a reviewing court in a writ posture on any subsequent review on direct appeal; the adequacy of the record created in the district court and whether the record for review may be improved through further district court proceedings.

2. Counsel should seek expedited consideration or a stay where appropriate and consider the simultaneous filing of writ applications in the Court of Appeal and Supreme Court in emergency circumstances.

3. Counsel should take great care to ensure that all filings in the Courts of Appeal and the Louisiana Supreme Court comply with the requirement of the relevant Rules of Court, including any local rules.

4. Counsel should ensure that an adequate record is created in the district court to justify and encourage the exercise of the supervisory jurisdiction of the Courts of Appeal or Louisiana Supreme Court.

5. Counsel should seek to respond to any state application for supervisory writs except where exceptional circumstances justify the choice not to respond.

6. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including seeking assignment of additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1933 (October 2017).

§2133. Special Circumstances

A. Duties of Counsel at Re-Trial

The standards for trial level representation apply fully to counsel assigned to represent a client at a re-trial of the guilt or sentencing phase. Counsel should be careful to clarify on the record the status of prior rulings made and orders issued in the proceedings. Where appropriate, counsel should seek to renew and re-litigate pre-trial claims, and to raise any new

claims which have developed or been discovered since the first trial. Counsel should not rely on the investigation or presentation of evidence from the first trial, but rather should start anew and seek to develop and present all available evidence, with the knowledge gained from the results of the first trial. Except in circumstances where counsel has substantial reason to believe the results will be different or no other witnesses are available, counsel should not present witnesses who provided unhelpful testimony earlier in the case.

B. Continuing Responsibility to Raise Issue of Client's Incompetence

1. Competence is a common issue for a juvenile facing a possible sentence of life without parole due to age and its attendant circumstances, including adolescent brain development, the nature of the charge, complexity of the case and the gravity of the decisions with which the client is faced. As a result, counsel should proceed with increased sensitivity to the question of competency and ensure that the defense team has members with sufficient skill and experience to identify and respond to issues relating to competency.

2. Counsel should be sensitive to the increased risk that, given the nature of the charge, the complexity of the case, the unique nature of the sentencing hearing, and the possibility of a life without parole sentence, a client may not sufficiently understand and appreciate: the nature of the charge and its seriousness; the defenses available at guilt and sentencing phase and how each affects the other; the consequences of each available plea on both guilt and sentencing; and, the range of possible verdicts and the consequences of those verdicts at guilt and sentencing.

3. In considering a juvenile client's ability to assist counsel in a JLWOP case, counsel should have particular regard to the requirement that the client be able to assist counsel not only as to the guilt phase but in the development of the mitigation case and the presentation of the sentencing phase case; a process that will include an exhaustive investigation of the client's character, history, record, the offense and other factors which may provide a basis for a sentence less than life without parole. The possibility of a sentence of life without parole and the necessity to prepare for and present a sentencing phase case greatly increase the complexity and weight of the demands placed upon the client in assisting counsel, including considerations of whether the client: is able to recall and relate facts pertaining to his actions and whereabouts at certain times; is able to maintain a consistent defense; is able to listen to the testimony of witnesses and inform counsel of any distortions or misstatements; has the ability to make simple decisions in response to well explained alternatives; is capable of testifying in his own defense; and, is apt to suffer a deterioration of his mental condition under the stress of trial or at a later stage of the case.

4. Counsel involved in a juvenile life without parole case at stages following the trial should be alert to additional concerns regarding the client's mental state, functioning and ability including existing issues that could be exacerbated by the reality that a life without parole sentence has been imposed, as well as by the effects of confinement on a juvenile, particularly prolonged confinement, such as the development or progression of depression or other mental

illnesses. Similarly, counsel at later stages should have particular regard to issues such as the client's ability to establish relationships with new counsel at later stages in the case, especially where earlier relationships were difficult for the client, and the client's ability to assist counsel with tasks such as investigations taking place years after the trial when deficiencies such as memory loss may become more pervasive.

5. In every JLWOP case, counsel should conduct a thorough, sensitive and ongoing inquiry into the competence of the client. Where concerns exist about a client's competence, counsel should ensure that the defense team documents in the client's file observations and interactions relevant to the client's competence.

6. Recognizing that raising competency may expose the client himself and otherwise confidential information to state actors, counsel should not raise competency unless satisfied that: a sufficient investigation has been conducted to make a reliable strategic decision in this regard; the client is likely not competent; and, the benefits to the client of raising competency outweigh the negatives. Counsel should consider the possibility that any information disclosed in competency proceedings will become admissible at trial as a result of the client's mental health being placed in issue.

7. In considering whether to raise competence, counsel should take into account all relevant circumstances, including: the likely outcome of an assessment by a sanity commission; the likely outcome of an assessment by a state expert; any negative findings, including malingering findings, that may arise from an assessment of the client; any negative information that may be divulged to the state from a review of records; any waiver of confidentiality arising from raising competence; the impact upon counsel's relationship with the client and his family of raising competence; the impact of raising competence before or during trial on any subsequent guilt or sentencing phase presentation; and, the effect on any subsequently available claim that the client was incompetent.

8. The delay caused by raising a question of competence with the court is not a proper reason for raising competence. Seeking to defray defense costs by having a court appointed mental health examination is not a proper reason for raising competence.

9. Prior to raising competence with the court, counsel should consult with a defense mental health expert, including having the expert review the available information and records relating to the client and, where appropriate, assessing the client.

10. Counsel should fully advise the client concerning the procedures for mental examinations, the reasons competence is in question, the possibility of hospitalization, and the consequences of an incompetency determination.

11. Where the court or the state raises the issue of competency, counsel should consider whether it is appropriate to resist any competency examination or advise the client not to cooperate with any such examination.

12. Where a sanity commission is appointed, counsel should ensure that the members of the sanity commission are independent and appropriately qualified to evaluate an adolescent. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be

present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the sanity commission.

13. Where the state seeks an examination of the client by a physician or mental health expert of the state's choice, counsel should consider opposing or seeking to limit such an examination and should also consider whether to advise the client not to cooperate with any such examination. Counsel should ensure that the scope of any examination is limited to the proper purposes for which it has been ordered. Counsel should consider seeking to be present, have a defense expert present or have recorded any examination of the client. Counsel should consider which records and witnesses, if any, should be identified and made available to the state's expert.

14. Counsel should obtain copies of: each examiner's report, all underlying notes and test materials; and, all records and materials reviewed. Where the client is hospitalized or otherwise placed under observation, counsel should obtain copies of all records of the hospitalization or observation.

15. Counsel should not stipulate to the client's competence where there appears a reasonable possibility that the client is not competent. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing where there is a good faith basis to doubt the client's competency.

16. At the competency hearing, counsel should protect and exercise the client's constitutional and statutory rights, including cross-examining the sanity commissioners and the state's witnesses, calling witnesses on behalf of the client including experts, and making appropriate evidentiary objections. Counsel should make sure that the inquiry does not stray beyond the appropriate boundaries. Counsel should consider the advantages and disadvantages to the client's whole case when determining how to conduct the competency hearing.

17. Counsel may elect to relate to the court personal observations of and conversations with the client to the extent that counsel does not disclose client confidences. Counsel may respond to inquiries about the attorney-client relationship and the client's ability to communicate effectively with counsel to the extent that such responses do not disclose confidential or privileged information.

18. If a client is found to be incompetent, counsel should advocate for the least restrictive level of supervision and the least intrusive treatment.

19. Where competency is at issue, or where the client has been found incompetent, counsel has a continuing duty to investigate and prepare the case. Where a client has been found irreversibly incompetent, counsel should continue to investigate and prepare the case sufficiently to ensure that the client will not be prejudiced by any delay or hiatus in the preparation of the case should he subsequently be returned to competence and the prosecution resumed.

20. A previously competent client may become incompetent over the course of a case and particularly under the stress of hearings and trial. Counsel should be vigilant and constantly reassess the client's competence and be prepared to raise the matter when appropriate. It is never

untimely to raise a question concerning a client's competence.

21. Some clients object strenuously to taking psychotropic medication and counsel may be called upon to advocate for protection of the client's qualified right to refuse medication.

C. Duties of Counsel When Client Attempts to Waive Right to Counsel, and Duties of Standby and Hybrid Counsel

1. When a client expresses a desire to waive the right to counsel, counsel should take steps to protect the client's interests, to avoid conflicts and to ensure that the client makes a knowing, voluntary and intelligent decision in exercise of his rights under the Sixth Amendment and La. Const. art. I, § 13. In particular, counsel should:

a. meet with the client as soon as possible to discuss the reasons the client wishes to proceed pro se and to advise the client of the many disadvantages of proceeding pro se. Such advice should include: the full nature of the charges; the range of punishments; the possible defenses; the role of mitigation prior to and at trial; the complexities involved and the rights and interests at stake; and the client's capacity to perform the role of defense attorney. Such advice should also include an explanation of the stages of appellate, post-conviction and habeas corpus review of any conviction or sentence, the effect of failing to effectively preserve issues for review and the impact of waiver of counsel on any possible ineffective assistance of counsel claim.

b. if the client maintains an intention or inclination to waive counsel, counsel should immediately request that an attorney with experience representing juveniles consult with the defendant and provide independent advice on the exercise of his Sixth Amendment rights. The role of independent counsel in this situation is not to represent the client in the exercise of his Sixth Amendment rights but instead to ensure that the client receives full and independent legal advice before choosing whether to waive his right to counsel.

c. in addition to seeking the assignment of independent counsel, counsel assigned to represent the defendant should immediately commence a thorough investigation into the question of the defendant's competence to waive counsel and whether, in the circumstances, any such waiver would be knowing, voluntary and intelligent. Such an investigation should not be limited to information obtained from interaction with the client but should include a detailed examination of available collateral sources (including documents and witnesses) as well as consultation with relevant experts.

2. Where a client asserts his right to self-representation counsel has an obligation both to investigate the question of the client's competence and the quality of the purported waiver and to bring before the court evidence raising doubts about these matters. Counsel should submit the case for the client's competent, knowing, voluntary and intelligent waiver to full adversarial testing. Counsel is not obligated to develop frivolous arguments in favor of incompetency but must investigate and advocate in a way that ensures that there is meaningful adversarial testing of the question of the waiver of representation by counsel.

Counsel remains responsible for the representation of the client until such a time as the court grants the client's motion to proceed pro se and must continue to perform in compliance with these performance standards. Where appropriate, counsel should object to a court's ruling accepting a waiver of counsel, should ensure that the issue is preserved for appellate review and should seek interlocutory review of the decision.

3. Where a juvenile facing a possible sentence of life without parole has been permitted to proceed pro se, counsel should move for the appointment of standby counsel and should seek to persuade the defendant to accept the services of standby counsel. The court may appoint stand by counsel over the defendant's objection and counsel should ordinarily accept such an appointment. The court may place constraints on the role of standby counsel and standby counsel should object to any constraints beyond those required by the Sixth Amendment. Where the quality of the defendant's relationship with counsel assigned to represent the defendant is such that his or her ability to serve as standby counsel would be significantly impaired, counsel should request additional counsel and urge the court to appoint such additional counsel as are assigned to the role of standby counsel.

4. Attorneys acting as standby counsel shall comply with these performance standards to the extent possible within the limitations of their role as standby counsel. Counsel appointed as standby counsel shall be entitled to be remunerated and to have their expenses met in the same manner and to the same extent as they would if assigned to represent a defendant who was not proceeding pro se.

5. With the defendant's consent, and subject to any prohibition imposed by the court, standby counsel may perform any role in the case that counsel would ordinarily perform whether in front of or in the absence of the jury.

6. In the absence of his consent to do otherwise, a pro se defendant must be allowed to preserve actual control over the case he chooses to present to the jury and is entitled to ensure that the jury's perception that he is representing himself is preserved. Accordingly, a defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in *Voir dire*, to question witnesses, and to address the court and the jury at appropriate points in the trial.

7. Where the defendant does not consent to the actions of standby counsel, the permissible conduct of standby counsel is different depending on whether the jury is present, the issue is raised solely before a judge or the action is taken entirely out of court.

a. Where the defendant does not consent to the actions of standby counsel, counsel must not in the presence of the jury make or substantially interfere with any significant tactical decisions, control the questioning of witnesses or speak instead of the defendant on any matter of importance. Participation by counsel to steer a defendant through the basic procedures of trial is, however, permissible. Standby counsel should assist the pro se defendant in overcoming routine procedural or evidentiary obstacles to the completion of some specific task, such as introducing evidence or objecting to testimony that the

defendant has clearly shown he wishes to complete. Counsel should also assist to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

b. Counsel's participation outside the presence of the jury is far less constrained. Even without the consent of the defendant, counsel may proactively participate in proceedings outside of the presence of the jury as long as the pro se defendant is allowed to address the court freely on his own behalf and disagreements between counsel and the pro se defendant are resolved by the judge in the defendant's favor whenever the matter is one that would normally be left to the discretion of counsel. Counsel should, in the absence of the jury, take such actions in the case as are consistent with the best interests of the client, including making any objections, and motions as would be consistent with high quality representation of the defendant.

8. Where it appears to standby counsel during the course of the proceedings that the decision to permit the defendant to proceed pro se or any decision to constrain the role of standby counsel should be revisited, counsel should move for reconsideration of those decisions.

9. Without interfering with the defendant's right to present his case in his own way, standby counsel should continue to fully prepare the case in order to be ready to assume responsibility for the representation of the defendant should the court or the defendant reverse the waiver of counsel. Where standby counsel is given or resumes responsibility for the representation of the defendant, counsel should move for all necessary time to prepare a defense for both the guilt and sentencing phases of the trial, as appropriate.

D. Counsel's Additional Responsibilities when Representing a Foreign National

1. Counsel at every stage of the case should make appropriate efforts to determine whether any foreign country might consider the client to be one of its nationals. Unless predecessor counsel has already done so, counsel representing a foreign national should:

a. immediately explain the benefits that the client may obtain through consular assistance;

b. immediately notify the client of the right to correspond with and have access to consular officers from his or her country of nationality via the nearest Consulate;

c. with the permission of the client, contact the nearest Consulate, and inform the relevant consular officials about the client's arrest and/or detention. In cases where counsel is unable to secure informed permission, professional judgment should be exercised to determine whether it is nevertheless appropriate to inform the Consulate;

d. where contact is made with the relevant Consulate, counsel should discuss what specific assistance the Consulate may be able to provide to the client in the particular case;

e. research, consider and preserve any legal rights the client may have on account of foreign nationality status; and

f. consider whether the client's foreign accent, dialect or knowledge of English is such that the client

requires an interpreter and, if so, take steps to secure one without delay for the duration of proceedings.

2. Where counsel has reason to believe that the client may be a foreign national, counsel should ensure that the defense team includes adequate expertise and experience in dealing with the defense of foreign nationals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1940 (October 2017).

§2135. Trial

A. Counsel's Duty of Trial Preparation

1. Throughout preparation and trial, counsel should consider the defense case theory and ensure that counsel's decisions and actions are consistent with that theory. Where counsel's decisions or actions are inconsistent with the theory, counsel should assess and understand why this is the case and then either change the conduct or change the theory to accommodate the new approach.

2. Counsel should complete the investigation, discovery, and research in advance of trial, such that counsel is confident that the most viable defense theory has been fully developed, pursued, and refined. Ordinarily, this process should be sufficiently advanced at least 180 days before trial to ensure that issues related to funding, expert witnesses, witness availability, securing witness attendance and accommodation, witness preparation and other trial preparation can proceed in an orderly and well planned fashion.

3. Counsel should not forgo investigation and preparation of a defense on the basis that the prosecution case appears weak or counsel believes that no penalty phase will be required.

4. Preparation for trial should include:

a. causing subpoenas to be issued for all potentially helpful witnesses, and all potentially helpful physical or documentary evidence:

i. counsel should ensure that all subpoenaed witnesses are aware of the correct date and time to appear in court, the action they should take when they appear in response to the subpoena and how to contact counsel if necessary;

ii. counsel should consider utilizing ex parte procedures for the subpoena of persons, documents or things when available;

iii. counsel should follow up on all subpoenas and follow procedures for informing the court of non-compliance and seeking enforcement;

iv. counsel may refrain from issuing subpoenas for particular witnesses based on strong tactical considerations and in the awareness of the waiver of the defendant's rights to compulsory process that this may entail.

b. arranging for defense experts to consult and/or testify on evidentiary issues that are potentially helpful (e.g., testing of physical evidence, opinion testimony, etc.):

i. adequate arrangements for the funding, scheduling and, where necessary, transport and accommodation of expert witnesses should be made.

ii. counsel should prepare with the experts and should be fully aware of the experts' opinions on all relevant

matters, including relevant prior testimony, before deciding whether or not to present them at trial.

iii. counsel should determine the extent to which evidence to be addressed by an expert witness may be presented through lay witnesses;

c. ensuring that counsel has obtained, read and incorporated into the defense theory all discovery, results of defense investigation, transcripts from prior or related proceedings and notices, motions and rulings in the case;

d. obtaining photographs and preparing charts, maps, diagrams, or other visual aids of all scenes, persons, objects, or information which may assist the fact finder in understanding the defense;

e. ensuring that the facilities at the courthouse will be adequate to meet the needs of the trial and the defense team.

5. Counsel should have available at the time of trial all material relevant to both the guilt and sentencing phases that may be necessary or of assistance at trial, including:

i. copies of all relevant documents filed in the case;

ii. relevant documents prepared or obtained by investigators;

iii. *Voir dire* questions, topics or plans;

iv. outline or draft of opening statements for both guilt and sentencing phases;

v. cross-examination plans for all possible prosecution witnesses;

vi. direct examination plans for all prospective defense witnesses;

vii. copies of defense subpoenas and proof of service;

viii. prior statements and testimony of all prosecution witnesses (e.g., transcripts, police reports) and counsel should have prepared transcripts of any audio or video taped witness statements. Counsel should also be prepared to prove the prior statements if required;

ix. prior statements of all defense witnesses;

x. reports from defense experts;

xi. a list of all defense exhibits, and the witnesses through whom they will be introduced (as well as a contingency plan for having necessary exhibits admitted if, for example, a witness fails to appear);

xii. exhibits, including originals and copies of all documentary exhibits;

xiii. demonstrative materials, charts, overheads, computer presentations or other similar materials intended for use at trial;

xiv. proposed jury instructions with supporting case citations, and where appropriate, consider and list the evidence necessary to support the defense requests for jury instructions; and

xv. relevant statutes and cases.

6. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process, and should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial. During case preparation and throughout trial, counsel should identify potential legal issues and the corresponding objections or motions. Counsel should consider when and how to raise those objections or motions. Counsel should also consider how best to respond to

objections or motions that could be raised by the prosecution.

7. Counsel should anticipate state objections and possible adverse court rulings that may impact the defense case theory, be prepared to address any such issues and have contingency plans should counsel's efforts be unsuccessful. Counsel should consider in advance of trial and prepare for the possibility of any emergency writ applications which may be filed by either party as well as making arrangements to ensure that the defense team is able to efficiently and effectively litigate any unanticipated emergency writ applications.

8. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial (e.g., use of prior convictions to impeach the defendant, admissibility of particular items of evidence) and, where appropriate, counsel should prepare motions and memoranda for such advance rulings.

9. Counsel should advise the client as to suitable courtroom dress and demeanor. Counsel should ensure that the client has appropriate clothing and the court personnel follow appropriate procedures so as not to reveal to jurors that the client is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint. Counsel should ensure that steps are taken to avoid prejudice arising from any security measures in the court and object to the use of both visible restraints on the client and any concealed restraints that adversely impact the client physically or psychologically or impair the client's ability to consult freely with counsel.

10. Counsel should plan with the defense team the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences and all required court appearances.

11. Counsel should plan with the defense team for contingencies arising from the absence or unavailability of any team member and the procedure for accessing additional resources for the team whenever required. Lead counsel should ensure that additional resources, including legal, investigative and support personnel, are available and utilized as appropriate immediately prior to and during trial. Lead counsel should ensure that all members of the defense team are fully aware of their role and responsibilities at trial.

12. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon the mitigation presentation and any verdict at the sentencing phase if there is a finding of guilt.

13. Counsel shall take necessary steps to ensure full, official recordation of all aspects of the court proceeding including motions, bench conferences in chambers or at sidebar, opening statements, closing arguments, and jury instructions. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

14. Counsel should make a written request for a continuance if he or she determines that the defense is not adequately prepared for trial or otherwise not able to present a high quality defense on the scheduled trial date. Counsel should be prepared to proffer a full justification for the

continuance, explaining the incomplete preparation, unavailable witness, prejudice from late disclosure by the state or other reason for the continuance. Counsel should be prepared to demonstrate reasonable diligence in preparing for trial but should request any necessary continuance even where counsel has not shown reasonable diligence. Counsel should avoid prematurely exposing the defense case theory by seeking to make any proffer of the reasons for the continuance on an ex parte and under seal basis.

15. Counsel should take all necessary steps to secure conditions of trial that allow for the provision of high quality representation, that allow the client to participate meaningfully in his own defense and that make adequate accommodations for any special needs the client may have. Such conditions may include the hours of court, the number and length of breaks, particular technological resources, the use of interpreters or other assistants to the client's understanding and communication, the pace of questioning and argument, medical assistance for the client and adequate space in the courtroom for the client's family and supporters.

16. Counsel should attempt to present as much mitigation evidence as possible during the guilt-innocence phase.

B. Jury Selection

1. Preparing for *Voir dire*

a. Counsel should be familiar with the procedures by which a jury venire is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire, including the creation of the jury pool from which the venire is selected. Similarly, counsel should be familiar with the law concerning challenges for cause and peremptory challenges and be alert to any potential legal challenges to the law, practice or procedure applied. Counsel should undertake a factual as well as legal investigation of any potential challenges that may be made.

b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these practices and procedures including any disproportionate impact the practices and procedures may have on the gender or racial makeup of the jury.

c. Counsel should be mindful that such challenges may include challenges to the selection of the grand jury and grand jury forepersons as well as to the selection of the petit jury venire.

d. Prior to jury selection, counsel should seek to obtain a prospective juror list and should develop a method for tracking juror seating and selection. Counsel should be aware of available juror information and, where appropriate, should submit a request for a jury questionnaire by a pretrial motion. In those cases where it appears necessary to conduct a pretrial investigation of the background of jurors, investigatory methods of defense counsel should neither harass nor unduly embarrass potential jurors or invade their privacy and, whenever possible, should be restricted to an investigation of records and sources of information already in existence.

e. Counsel should develop *Voir dire* questions in advance of trial. Counsel should tailor *Voir dire* questions to

the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case for both guilt and sentencing. Creative use of *Voir dire* can foreshadow crucial, complex, expert, detrimental, or inflammatory evidence, and emphasize the need for impartiality notwithstanding the nature of the offense charged. Effective *Voir dire* will lay much of the ground work for the opening statement.

f. *Voir dire* questions should be designed to elicit information about the attitudes and values of individual jurors, which will inform counsel and the client in the exercise of peremptory challenges and challenges for cause. Areas of inquiry should include:

i. attitude towards sentencing a juvenile to a sentence of life without parole; in particular, each juror's willingness and capacity to return a verdict that could result in a sentence of life without parole if selected as a juror in the case;

ii. attitudinal bias or prejudice (including those based on race, religion, political beliefs, and sexual preference);

iii. pretrial publicity (including the nature, extent and source of the juror's knowledge, and whether they have learned information that will not be admitted at trial; have discussed what they have read or heard; have heard, formed or expressed opinions on guilt or innocence; and can set such knowledge and opinions aside);

iv. feelings regarding the nature of the offense;

v. juror experience (or that of a close relative) similar to evidence in the case;

vi. experience (or that of a close relative) as a crime victim, witness, or defendant;

vii. amount of weight given to testimony of a police officer (including any experience in law enforcement or relationship with those in law enforcement);

viii. acquaintance with witness, counsel or defendant;

ix. attitudes toward defenses;

x. ability to understand principles of law and willingness to accept the law as given by the court;

xi. prior experience as a juror;

xii. formal qualifications to serve as a juror;

xiii. ability to render an impartial verdict according to the law and the evidence; and

xiv. other areas of inquiry particular to the juror, such as whether a bilingual juror is willing to abide by the translator's version of the testimony, or whether a hearing impaired juror will refrain from reading lips of parties having private conversations unintended for the jurors' perception.

g. Among the other purposes *Voir dire* questions should be designed to serve are the following:

i. to convey to the panel legal principles which are important to the defense case and to determine the jurors' attitudes toward those legal principles (especially where there is some indication that particular legal principles may not be favored or understood by the population in general or where a principle is peculiarly based on specific facts of the case);

ii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

iii. to present the client and the defense case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and

iv. to establish a relationship with the jury. Counsel should be aware that jurors will develop impressions of counsel and the defendant, and should recognize the importance of creating a favorable impression.

h. Counsel should be familiar with the law concerning mandatory and discretionary *Voir dire* inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

i. Counsel should be familiar with the law concerning challenges for cause and peremptory challenges. *Voir dire* should be responsive to this legal framework and designed to ensure that any basis for a cause challenge is adequately disclosed by the questions and answers.

j. Counsel should be aware of the waiver of judicial review of any cause challenge denied by the trial court where the defense does not exhaust its peremptory challenges. Counsel should create an appropriate record in the trial court where peremptory challenges are exhausted without the defense successfully removing all jurors against whom an unsuccessful challenge for cause had been made.

k. Where appropriate, counsel should consider seeking expert assistance in the jury selection process. Recognizing the scope of the task of adequately recording all relevant information during the *Voir dire* process, lead counsel should ensure that the team has secured adequate resources, in the form of additional personnel or equipment, to adequately perform this task.

2. Examination of the Prospective Jurors

a. Counsel should personally *Voir dire* the panel.

b. If the court denies counsel's request to ask questions during *Voir dire* that are significant or necessary to the defense of the case, counsel should take all steps necessary to protect the *Voir dire* record for judicial review including, where appropriate, filing a copy of the proposed *Voir dire* questions or reading proposed questions into the record.

c. Counsel should consider requesting individual, sequestered *Voir dire*, particularly in cases where the *Voir dire* will canvas sensitive or potentially prejudicial subjects, for example, personal experiences of jurors of abuse, prior exposure to media coverage of the case and knowledge of the case. If particular *Voir dire* questions may elicit sensitive or prejudicial answers, counsel should consider requesting that those parts of the questioning be conducted outside the presence of the other jurors. Counsel may also consider requesting that the court, rather than counsel, conduct the *Voir dire* as to sensitive questions.

d. In a group *Voir dire*, counsel should take care when asking questions which may elicit responses capable of prejudicing other prospective jurors. Counsel should design both questions and questioning style in group *Voir dire* to elicit responses in a way that will minimize any negative effect and maximize any favorable effect on other prospective jurors having regard to counsel's objectives in *Voir dire*.

e. When asking questions for the purpose of eliciting information from a juror, counsel should usually phrase questions in an open-ended fashion that elicits

substantive responses, rather than allowing the juror to respond by silence or with a simple yes or no.

f. Counsel should ensure that the record reflects all answers of all jurors to all questions asked. Counsel should ensure that the record clearly reflects which juror in a panel is being asked a particular question and which gives a particular answer. Where questions are asked of an entire panel or non-verbal responses are given, counsel should ensure that the record accurately reflects all of the responses given and which jurors gave those responses.

g. Counsel should ensure that other members of the defense team are making detailed notes of the responses of individual jurors, the responses of venire panels to more generally directed questions and the demeanor and reactions of members of the venire.

3. Counsel should determine the extent to which each juror could give meaningful consideration to mitigating circumstances, having particular regard to those circumstances defined as mitigating in the statute and the case law.

4. Counsel should determine the extent to which a juror's views on juvenile life without parole or mitigation may substantially impair his or her ability to make an impartial decision at guilt or sentencing. Counsel may consider exploring factors such as the strength of the juror's views on life without parole for a juvenile, the origin of those views, how long they have been held and whether the juror has discussed those views with others.

5. Counsel should apply techniques of *Voir dire* designed to insulate jurors who are to be challenged for cause against rehabilitation based, in particular, upon their stated willingness to follow the law.

6. Counsel should mount a challenge for cause in all cases where there is a reasonable argument that the juror's views on sentencing a juvenile to life without parole or mitigation would prevent or substantially impair the performance of the juror's duties in accordance with the instructions or the oath.

7. Counsel should apply techniques of *Voir dire* designed to rehabilitate jurors who have expressed scruples against the infliction of a life without parole sentence on a juvenile.

8. Counsel should apply techniques of *Voir dire* designed to ensure that each prospective juror understands and accepts:

a. that each juror is entitled to their own opinion and vote;

b. that while the juror must deliberate, the juror's opinion is not subject to negotiation or compromise and is free from criticism by or explanation to the judge, the prosecutor or others; and

c. that each juror is entitled to the assistance of the court in having his or her opinion respected.

9. Counsel should consider exercising peremptory challenges solely or principally on the assessment of each juror's attitude to life without parole and mitigation.

C. Other challenges for Cause and Peremptory Challenges

1. Counsel should challenge for cause all prospective jurors against whom a legitimate challenge can be made when it is likely to benefit the client.

2. When a challenge for cause is denied, counsel should consider exercising a peremptory challenge to remove the juror.

3. In exercising challenges for cause and peremptory strikes, counsel should consider both the panelists who may replace a person who is removed and the total number of peremptory challenges available to the state and the defense. In making this decision counsel should be mindful of the law requiring counsel to use one of his or her remaining peremptory challenges curatively to remove a juror upon whom counsel was denied a cause challenge or waive the complaint on appeal, even where counsel ultimately exhausts all peremptory challenges.

4. Counsel should timely object to and preserve for appellate review all issues relating to the unconstitutional exclusion of jurors by the prosecutor or the court.

5. Counsel should request additional peremptory challenges where appropriate in the circumstances present in the case.

D. Unconstitutional Exclusion of Jurors

1. In preparation for trial, during *Voir dire* and at jury selection, the defense team should gather and record all information relevant to a challenge to the state's use of peremptory strikes based in part or in whole on race, gender or any other impermissible consideration. This will include: the race and gender of the venire, the panel, the petit jury and the jurors struck for cause and peremptorily; any disparity in questioning style between jurors; a comparative analysis of the treatment of similarly placed jurors; non-verbal conduct of potential jurors; historical evidence of policy, practice or a pattern of discriminatory strikes; and, other evidence of discriminatory intent. Such material should be advanced in support of any challenge to the exercise of a state peremptory strike where available and appropriate in the circumstances. Counsel should ensure that the record reflects the racial and gender composition of the jury pool, the venire, each panel, the peremptory challenges made by both parties, and of the petit jury. The record should also reflect the race and gender of the defendant, the victim(s) and potential witnesses, and any motivation the state may have with regard to race or gender in exercising peremptory challenges. Counsel should also ensure that, where necessary the record reflects non-verbal conduct by jurors such as demeanor, tone and appearance.

2. Where evidence of the discriminatory use of peremptory strikes, including evidence of the presence of a motive for discriminatory use of peremptory strikes emerges after the jury is sworn, counsel should make or reurge any earlier objection to the state's strikes.

3. Counsel should not exercise a peremptory strike on the basis of race, gender or any other impermissible consideration and should maintain sufficient contemporaneous notes to allow reasons for particular peremptory strikes to be proffered if required by the court.

E. *Voir dire* After the Jury has been Impaneled

1. Counsel should consider requesting additional *Voir dire* whenever potentially prejudicial events occur, for instance, when jurors are exposed to publicity during the trial, jurors have had conversations with counsel or court officials, jurors learn inadmissible evidence, it is revealed that jurors responded incorrectly during *Voir dire*, or jurors otherwise violated the court's instructions.

2. Counsel should be diligent and creative in framing questions that not only probe the particular issue, but also avoid creating or increasing any prejudice. Counsel should consider requesting curative instructions, seating alternate jurors, a mistrial, or other corrective measures.

3. If the verdict has already been rendered, counsel should request a post-trial hearing and an opportunity to examine jurors within the scope permitted by law.

F. Objection to Error and Preservation of Issues for Post Judgment Review

1. Counsel should be prepared to make all appropriate evidentiary objections and offers of proof, and should vigorously contest the state's evidence and argument through objections, cross-examination of witnesses, presentation of impeachment evidence and rebuttal. Counsel should be alert for, object to, and make sure the record adequately reflects instances of prosecutorial misconduct.

2. Counsel should make timely objections whenever a claim for relief exists under the law at present or under a good faith argument for the extension, modification or reversal of existing law unless sound tactical reasons exist for not doing so. There should be a strong presumption in favor of making all available objections and any decision not to object should be made in the full awareness that this may constitute an irrevocable waiver of the client's rights.

3. Where appropriate, objections should include motions for mistrial and/or admonishments to ignore or limit the effect of evidence. Counsel should seek an evidentiary hearing where further development of the record in support of an objection would advance the client's interests. Areas in which counsel should be prepared to object include:

- a. the admissibility or exclusion of evidence and the use to which evidence may be put;
- b. the form or content of prosecution questioning, including during *Voir dire*;
- c. improper exercises of prosecutorial or judicial authority, such as racially motivated peremptory challenges or judicial questioning of witnesses that passes beyond the neutral judicial role and places the judge in the role of advocate;
- d. the form or content of prosecution argument, including the scope of rebuttal argument;
- e. jury instructions and verdict forms; and
- f. any structural defects.

4. Counsel should ensure that all objections are made on the record and comply with the formal requirements applicable in the circumstances for making an effective objection and preserving a claim for subsequent review. These formal requirements may relate to a range of considerations, including: timing of the objection; whether an objection is oral or written; the need to proffer excluded testimony or questions; requesting admonishment of the jury; requesting a mistrial; exhausting peremptory challenges; providing notice to the attorney general; and the specific content of the objection. In addition to the objection itself, counsel should ensure that information relevant to potential review is preserved in the record, i.e., that the transcript, the court file, or the exhibits preserved for review include all the information about the events in the trial court that a reviewing court might need to rule in the client's favor.

5. Before trial, counsel should ascertain the particular judge's procedures for objections. If the judge orders that counsel not state the grounds for the objection in the jury's presence, or if the reasons for the objection require explanation or risk prejudicing the jury, counsel should request permission to make the objection out of the hearing of the jury, for example, by approaching the bench. Counsel should ensure that any objection and ruling is made on the record and where this is not possible at a bench conference, should request another procedure for making objections, such as having objections handled in chambers in the presence of the court reporter. Where, despite counsel's efforts, objections are made or rulings announced in the absence of the court reporter, counsel should ensure that those objections and rulings are subsequently placed on the record in as full a detail as possible.

6. Where an objection is made, counsel should state the specific grounds of objection and be prepared to fully explain and argue all bases of the objection. Where a claim for relief exists based on constitutional grounds, counsel should ensure that the record reflects that the objection is brought on those constitutional grounds. Counsel should be particularly careful to ensure that the record reflects the federal nature of any objection based in federal constitutional law or any other federal law.

7. Counsel's arguments to the court should explain both why the law is in the client's favor and why the ruling matters. Arguments should be precise; objections should be timely, clear and specific. For example:

a. if the court excludes evidence, counsel should proffer what the evidence would be, why it is important to the defense, and how its exclusion would harm the defense.

b. if the court limits cross-examination, counsel should proffer what counsel was attempting to elicit and why it is important.

c. if the court admits evidence over defense objection, counsel should, where appropriate, move for a limiting instruction.

d. if the court rules inadmissible prejudicial evidence already placed before the jury, counsel should seek a mistrial and/or an admonishment, as appropriate.

8. Counsel should not refrain from making objections simply because they are unsure of the precise legal principle or case name to invoke. In these situations, counsel should explain the client's position in factual terms, explaining why a certain ruling under specified facts is prejudicial to the client.

9. Counsel should not rely on objections made by co-defendant's counsel unless the judge has made clear that an objection on behalf of one defendant counts as an objection for all defendants. Even in that situation, counsel may want to identify specific prejudice that would befall her client if the court ruled adversely.

10. Counsel should take care not to appear to acquiesce in adverse rulings, by, for example, ending the discussion with comments intended to reflect politeness (e.g. "Thank you, Your Honor") but which may appear in the transcript as an abandonment of counsel's earlier objection and agreement with the trial court's rationale. Accordingly, counsel should find ways to be polite while making clear that the objection has not been abandoned.

11. Counsel should insist on adequate methods for recording demonstrative evidence. For example, diagrams should be drawn on paper instead of blackboards, and demonstrations not amenable to verbal descriptions should be videotaped. Requests for preservation of exhibits and diagrams should be made in a timely manner. Counsel should make sure that all references to exhibits contain the exhibit number.

12. Counsel at every stage have an obligation to satisfy themselves independently that the official record of the proceedings is complete and accurate and to supplement or correct it as appropriate.

13. If something transpires during the trial that is relevant and significant and has not been made a part of the record (for instance, communications out of the presence of the court-reporter or non-verbal conduct), counsel should ensure that the record reflects what occurred.

G. Opening Statement

1. Counsel should make an opening statement.

2. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, including law enforcement, unless a strategic reason exists for not doing so.

3. Counsel should be familiar with the law of the jurisdiction and the individual trial judge's practice regarding the permissible content of an opening statement.

4. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement. For example, if the evidence that the defense might present depends on evidence to be introduced in the state's case, counsel should avoid making promises of what evidence it will present because counsel may decide not to present that evidence. Counsel should not discuss in the opening statement the defense strategy with the jury to the extent that later defense decisions, such as putting the client or particular defense witnesses on the stand can be interpreted as concessions of the prosecution meeting its burden, or of weakness of the defense case. Counsel should consider the need to, and if appropriate, ask the court to instruct the prosecution not to mention in opening statement contested evidence for which the court has not determined admissibility.

5. Before the opening statement, counsel should be familiar with the names of all witnesses and the crucial dates, times and places, and should have mastered each witness's testimony so that favorable portions can be highlighted. If the complainant and defendant know each other, counsel should consider discussing their relationship and previous activities to create a context for the alleged offense. Counsel may wish to disclose defense witnesses' impeachable convictions, only if counsel is certain that the witnesses will testify. Where evidence is likely to be ruled inadmissible, counsel should refer to it only after obtaining a ruling from the court.

6. Counsel's objectives in making an opening statement may include the following:

a. to provide an overview of the defense case, introduce the theory of the defense, and explain the evidence the defense will present to minimize prejudice from the government case;

b. to identify the weaknesses of the prosecution's case, point out facts that are favorable to the defense that the government omitted in its opening, create immediate skepticism about the direct testimony of government witnesses and make the purpose of counsel's cross-examination more understandable;

c. to emphasize the prosecution's burden of proof;

d. to summarize the testimony of witnesses, and the role of each in relationship to the entire case and to present explanations for government witnesses' testimony, i.e. bias, lack of ability to observe, intoxication and Giglio evidence;

e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;

f. to clarify the jurors' responsibilities;

g. to point out alternative inferences from circumstantial evidence arising from either the government's case or evidence the defense will present, and to state the ultimate inferences which counsel wishes the jury to draw;

h. to establish counsel's credibility with the jury;

i. to personalize and humanize the client and counsel for the jury; and

j. to prepare the jury for the client's testimony or decision not to testify.

7. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement or the defense summation. Counsel should keep close account of what is proffered. Variances between the opening statement and the evidence may necessitate a mistrial, a cautionary instruction, or prove to be a fruitful ground for closing argument.

8. Whenever the prosecutor oversteps the bounds of proper opening statement (by, for example, referencing prejudicial material or other matters of questionable admissibility and assertions of fact that the government will not be able to prove), counsel should object, requesting a mistrial, or seeking cautionary instructions, unless clear tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to:

a. the significance of the prosecutor's error;

b. the possibility that an objection might enhance the significance of the information in the jury's mind, or negatively impact the jury; and

c. whether there are any rules made by the judge against objecting during the other attorney's opening argument.

9. Improper statements that counsel should consider objecting to may include:

a. attempts to arouse undue sympathy for the victim of a crime or put the jurors in the shoes of the victim;

b. appeals to the passions and prejudices of the jurors;

c. evidence of other crimes;

d. defendant's prior record;

e. reciting evidence at great length or in undue detail;

f. personal evaluation of the case or of any state's witness;

g. argument on the merits of the case or the pertinent law; and

h. defendant's possible failure to testify or present evidence.

H. Preparation for Challenging the Prosecution's Case

1. Counsel should attempt to anticipate weaknesses in the prosecution's proof. Counsel should systematically analyze all potential prosecution evidence, including physical evidence, for evidentiary problems and, where appropriate, challenge its admissibility and/or present other evidence that would controvert the state's evidence. Counsel should make all appropriate challenges to improper testimony. Counsel should challenge improper bolstering of state witnesses.

2. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case. If a fact or facts to be stipulated are harmful to the client but there is still an advantage to stipulating, counsel should make certain that the stipulation is true before consenting to a stipulation. While there may be strategic reasons to forgo cross-examination of particular witnesses or objections to evidence, counsel should make sure to subject the state's case to vigorous adversarial testing.

3. In preparing for cross-examination, counsel should be familiar with the applicable law and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

4. In preparing for cross-examination, counsel should:

a. consider the need to integrate cross-examination, the theory of the defense and closing argument;

b. consider whether cross-examination of each individual witness is likely to generate helpful information, and avoid asking questions that are unnecessary, might elicit responses harmful to the defense case or might open the door to damaging and otherwise improper redirect examination;

c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;

d. prepare a cross-examination plan for each of the anticipated witnesses;

e. be alert to inconsistencies, variations and contradictions in a witness' testimony;

f. be alert to possible inconsistencies, variations and contradictions between different witnesses' testimony;

g. be alert to significant omission or deficiencies in the testimony of any witnesses;

h. review and organize all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;

i. have prepared a transcript of all audio or video tape recorded statements made by the witness;

j. where appropriate, review relevant statutes and local law enforcement policy and procedure manuals, disciplinary records and department regulations for possible use in cross-examining law enforcement witnesses;

k. be alert to and raise, where appropriate, issues relating to witness competency and credibility, including bias and motive for testifying, evidence of collaboration between witnesses, innate physical ability to perceive, external impediments to the witness' perception, psychological hindrances to accurate perception, and faulty memory;

1. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness;

m. be alert to potential Fifth Amendment and other privileges that may apply to any witness;

n. elicit all available evidence to support the theory of defense; and

o. prepare a memorandum of law in support of the propriety of any line of impeachment likely to be challenged.

5. Counsel should consider conducting a *Voir dire* examination of potential prosecution witnesses who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections. Counsel should not stipulate to the admission of expert testimony that counsel knows will be harmful to the defense where there exists a viable claim regarding its admissibility. Counsel should be alert to frequently encountered competency issues such as: age (chronological and developmental), taint of witness' ability to recall events by external factors such as suggestion, mental disability due to drug or alcohol abuse, and mental illness.

6. Before trial, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses to the extent required by the law. If disclosure was not properly made counsel should consider requesting relief as appropriate including:

a. adequate time to review the documents or investigate and prepare further before commencing cross-examination, including a recess or continuance if necessary;

b. exclusion of the witness' testimony and all evidence affected by that testimony;

c. a mistrial;

d. dismissal of the case; and/or

e. any other sanctions counsel believes would remedy the violation.

7. Counsel should attempt to mitigate the prejudicial impact of physical evidence where possible by: attempting to stipulate to facts that the government seeks to establish through prejudicial evidence, moving to redact irrelevant and unduly prejudicial information from documents, recordings and transcripts, and/or asking the court to exclude part of the proposed evidence as unnecessarily cumulative. Where prejudicial physical evidence will be admitted, counsel should seek to lessen its prejudice by seeking restrictions on the form of the evidence (e.g. size of photographs, black and white, rather than color), the manner of presentation of the evidence and to bar undue emphasis or repetitive presentation of the evidence. Similarly, where necessary, counsel should object to the exclusion or redaction of exculpatory portions of evidence.

8. Counsel should become familiar with all areas in which expert evidence may be offered and should develop a strong knowledge of all forensic fields involved in the case with the assistance of experts as appropriate.

I. Presenting the Client's Case

1. Counsel should develop, in consultation with the client, an overall defense strategy. Counsel should prepare for the need to adapt the defense strategy during trial where necessary. In extreme cases where a defense theory is no longer tenable, counsel should abandon that theory rather than losing all credibility with the jury, and proceed to emphasize the available defense evidence which supports another theory of defense. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case, and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Even where no affirmative defense to guilt is mounted, counsel must be conscious of the potential for the case to proceed to sentencing phase and should ensure that the guilt phase is conducted in a way that supports and extracts any available advantages in the guilt phase for the sentencing phase presentation. Counsel should be conscious of the perils of a denial defense and the likely negative effect such a defense will have should the case proceed to sentencing phase.

2. Counsel should not put on a non-viable defense but at the same time, even when no theory of defense is available, if the decision to stand trial has been made, counsel must hold the prosecution to its heavy burden of proof beyond reasonable doubt.

3. Counsel should discuss with the client, in an age and developmentally appropriate manner, all of the considerations relevant to the client's decision to testify, including but not limited to, the client's constitutional right to testify, his or her right to not testify, the nature of the defense, the client's likely effectiveness as a witness on direct and under cross-examination, the client's susceptibility to impeachment with prior convictions, bad acts, out-of-court statements or evidence that has been suppressed, the client's demeanor and temperament, and the availability of other defense or rebuttal evidence. Counsel should give special consideration to the likely impact of the client's testimony on any defenses and any possible mitigation presentation, particularly where questions of mental health and mental capacity are in issue. Counsel shall recommend the decision which counsel believes to be in the client's best interest. The ultimate decision whether to testify is the client's. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should prepare for the possibility that the client's testimony may become essential to the defense case. Therefore, the client should be thoroughly prepared for both direct and cross-examination before trial. Counsel should familiarize the client with all prior statements and exhibits, and review appropriate demeanor for taking the stand. Counsel should be respectful of the client when conducting the direct examination, eliciting testimony that will be helpful to the client's defense. Counsel should avoid unnecessary direct examination that opens the door to damaging cross examination.

4. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of

persuasion or a burden of production. Counsel should be familiar with the notice requirements for affirmative defenses and introduction of expert testimony.

5. In preparing for presentation of a defense case, counsel should, where appropriate:

a. consider all potential evidence which could corroborate the defense case, and the import of any evidence which is missing;

b. after discussion with the client, make the decision whether to call any witnesses and, if calling witnesses, decide which witnesses will provide the most compelling evidence of the client's defense. In making this decision, counsel should consider that credibility issues with particular witnesses can be overcome when several witnesses testify to the same facts. Counsel should not call witnesses who will be damaging to the defense;

c. develop a plan for direct examination of each potential defense witness;

d. determine the implications that the order of witnesses may have on the defense case;

e. determine what facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;

f. consider the possible use and careful preparation of character witnesses, and any negative consequences that may flow from such testimony;

g. consider the need for, and availability of, expert witnesses, especially to rebut any expert opinions offered by the prosecution, and what evidence must be submitted to lay the foundation for the expert's testimony;

h. consider and prepare for the need to call a defense investigator as a witness;

i. review all documentary evidence that must be presented;

j. review all tangible evidence that must be presented;

k. consider using demonstrative evidence (and the witnesses necessary to admit such evidence); and

l. consider the order of exhibit presentation and, if appropriate, with leave of court prior to trial, label each exhibit.

6. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

7. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor, and procedures including sequestration.

8. Counsel should systematically analyze all potential defense evidence for evidentiary problems. Counsel should research the law and prepare legal arguments in support of the admission of each piece of testimony or other evidence. Counsel should plan for the contingency that particular items of evidence may be ruled inadmissible and prepare for alternative means by which the evidence, or similar evidence, can be offered. Similarly, counsel should have contingency plans for adjusting the defense case theory where important evidence may be ruled inadmissible. Counsel should not seek to have excluded prosecution evidence that is helpful to the defense.

9. Counsel should conduct a direct examination that follows the rules of evidence, effectively presents the

defense theory, and anticipates/defuses potential weak points.

10. If a prosecution objection is sustained or defense evidence is improperly excluded, counsel should make appropriate efforts to rephrase the question(s) and/or make an offer of proof.

11. Counsel should object to improper cross-examination by the prosecution.

12. Counsel should conduct redirect examination as appropriate.

13. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

14. Counsel should keep a record of all exhibits identified or admitted.

15. If a witness does not appear, counsel should request a recess or continuance in order to give counsel a reasonable amount of time to locate and produce the witness. Counsel should request any available relief if the witness does not appear.

16. Understanding that all evidence introduced at guilt may be relied on at sentencing, counsel should actively consider the benefits of presenting evidence admissible in the guilt phase that is also relevant in mitigation of punishment.

J. Preparation of the Closing Argument

1. Counsel should make a closing argument.

2. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

3. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning limits and objections during closing argument, and provisions for rebuttal argument by the prosecution.

4. Well before trial, counsel should plan the themes, content, and organization of the summation. The basic argument should be formulated before the first juror is sworn, with accurate notes taken throughout the trial to permit incorporation of the developments at trial. In developing closing argument, counsel should review the proceedings to determine what aspects can be used in pursuit of the defense theory of the case and, where appropriate, should consider:

a. highlighting weaknesses in the prosecution's case, including what potential corroborative evidence is missing, especially in light of the prosecution's burden of proof;

b. describing favorable inferences to be drawn from the evidence;

c. incorporating into the argument:

i. the theory of the defense case;

ii. helpful testimony from direct and cross-examinations;

iii. verbatim instructions drawn from the expected jury charge;

iv. responses to anticipated prosecution arguments;

v. the promises of proof the prosecutor made to the jury during the opening statement; and

vi. visual aids and exhibits;

d. the effect of the defense argument on the prosecutor's rebuttal argument.

5. Counsel should not demean or disparage or be openly hostile towards the client.

6. Whenever the prosecutor exceeds the scope of permissible argument or rebuttal, counsel should object, request a mistrial, or seek a cautionary instruction unless strong tactical considerations suggest otherwise.

K. Jury Instructions and Verdict

1. Counsel should be familiar with the Louisiana Rules of Court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges and preserving objections to the instructions.

2. Counsel should always submit proposed jury instructions in writing.

3. Counsel should review the court's proposed jury charge and any special written charge proposed by the state and, where appropriate, counsel should submit special written charges which present the applicable law in the manner most favorable to the defense in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense.

4. Where possible, counsel should provide citations to statute and case law in support of any proposed charge. Counsel should endeavor to ensure that all jury charge discussions are on the record or, at the very least, that all objections and rulings are reflected in the record.

5. Where appropriate, counsel should object to and argue against any improper charge proposed by the prosecution or the court.

6. If the court refuses to adopt a charge requested by counsel, or gives a charge over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of any proposed special written charge is included in the record.

7. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary request an additional or curative charge.

8. If there are grounds for objecting to any aspect of the charge, counsel should seek to object before the verdict form is submitted to the jury and the jury is allowed to begin deliberations.

9. If the court proposes giving a further or supplemental charge to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge provide a copy of the proposed charge to counsel before it is delivered to the jury. Counsel should be present for any further charge of the jury and should renew or make new objections as appropriate to any further charge given to the jurors after the jurors have begun their deliberations. Counsel should object to any charge which expressly or implicitly threatens to keep the jury sequestered indefinitely until a verdict is reached or is otherwise improperly coercive, for example, by omitting the caution to jurors that they should not abandon their deeply held beliefs.

10. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

11. Upon a finding of guilt, counsel should be alert to any improprieties in the verdict and should request the court to poll the jury. In a multi-count indictment, defense counsel

normally should request a poll as to each count on which the jury has convicted.

L. The Defense Case Concerning Sentencing

1. Preparation for the sentencing phase should begin immediately upon counsel's entry into the case. Counsel at every stage of the case have a continuing duty to investigate issues bearing upon sentencing and to seek information that supports mitigation, explains the offense, or rebuts the prosecution's case in aggravation. Counsel should not forgo investigating or presenting mitigation in favor of a strategy of relying only on residual doubt or sympathy and mercy. Counsel should exercise great caution in seeking to rely upon residual doubt as to the defendant's guilt.

2. Trial counsel should discuss with the client early in the case the sentencing alternatives available, and the relationship between the strategy for the sentencing phase and for the guilt phase.

3. Prior to the sentencing phase, trial counsel should discuss with the client the specific sentencing phase procedures of the jurisdiction and advise the client of steps being taken in preparation for sentencing.

4. Counsel at every stage of the case should discuss with the client the content and purpose of the information concerning sentencing that they intend to present to the jury, means by which the mitigation presentation might be strengthened, and the strategy for meeting the prosecution's case in aggravation.

5. As with the guilt phase, counsel should consider and discuss with the client, the advisability and possible consequences of the client testifying in the sentencing phase.

6. Counsel should present all reasonably available evidence in mitigation unless there are strong strategic reasons to forgo some portion of such evidence. Counsel should make every effort to find a way to successfully present all of the mitigating evidence rather than to abandon a piece or pieces of mitigating evidence due to potential negatives arising from the evidence. Counsel should not make agreements with the prosecution whereby the defense agrees to put on little or no mitigation evidence.

7. Counsel should present mitigating evidence in an organized and coherent fashion, especially when it is of a complex nature involving expert testimony. Counsel should seek to present a narrative of the client's life story that serves to humanize the client and offers a cohesive theory for a sentence other than life without parole rather than presenting each mitigating circumstance as separate and distinct from each other. Counsel should seek to illustrate the ways different pieces of mitigation evidence interrelate to ensure a comprehensive picture of the client's life and the mitigation case that is produced. Counsel should consider the need to utilize an expert witness to synthesize or explain various and/or divergent elements of a mitigation presentation. However, counsel should be conscious of the desirability of presenting such evidence through lay witnesses, rather than relying too heavily upon expert testimony. Counsel should present all mitigating evidence in such a way that it maintains the defense theory of the case, and should avoid presenting or opening the door to evidence that undermines the defense theory.

8. In developing and advancing the defense theory of the case at sentencing, counsel should seek to integrate the

defense theories at guilt and sentencing into a complimentary whole or, where this is not possible, seek to minimize any discordance between the defense theories in guilt and penalty phase.

9. In deciding the defense theory in the sentencing phase and which witnesses, evidence and arguments to prepare, counsel must exercise a high degree of skill and care as an advocate to determine the most persuasive course to adopt in the circumstances of each particular case. Counsel should consider evidence and arguments that would: be explanatory of the offense(s) for which the client is being sentenced; reduce the client's moral culpability for the offense; demonstrate the client's capacity for rehabilitation; demonstrate the client's remorse; rebut or explain evidence presented by the prosecutor; present positive aspects of the client and the client's life; humanize the client; engender sympathy or empathy in the jury; or would otherwise support a sentence less than life without parole. Counsel should always consider and seek to address the likely concern the sentencer has regarding the possibility that the client will represent a future danger if released from prison.

10. The witnesses and evidence that counsel should prepare and consider for presentation in the penalty phase include:

a. witnesses familiar with and evidence relating to the client's life and development, from conception to the time of sentencing, that would be explanatory of the offense(s) for which the client is being sentenced, would rebut or explain evidence presented by the prosecutor, would present positive aspects of the client's life, would demonstrate the client's capacity for growth and rehabilitation or would otherwise support a sentence less than life without parole;

b. expert and lay witnesses along with supporting documentation (e.g. school records, military records) to provide developmental, medical, psychological, sociological, cultural or other insights into the client's mental and/or emotional state and life history that may explain or lessen the client's culpability for the underlying offense(s); to give a favorable opinion as to the client's capacity for rehabilitation; to explain possible treatment programs; or otherwise support a sentence less than life without parole; and/or to rebut or explain evidence presented by the prosecutor. Supporting documentation should be read, organized, evaluated and condensed to a form that is most conducive to explaining how and why this mitigation is relevant.;

c. witnesses who can testify about the adverse impact of a sentence of life without parole on the client's family and loved ones;

d. demonstrative evidence, such as photos, videos, physical objects and documents that humanize the client, portray him positively or add emphasis to an aspect of the testimony of a witness or witnesses.

e. witnesses drawn from the victim's family or intimates who are able to offer evidence that may support an argument for a sentence other than life without parole.

11. Among topics counsel should consider presenting through evidence and argument are:

- a. youth and its attendant circumstances;
- b. adolescent development;

c. positive character evidence and evidence of specific positive acts, including evidence of positive relationships with others, contributions to individuals and the community, growth and progress over his life and since arrest, prospects for rehabilitation and reputation evidence;

d. family and social history (including physical, sexual, or emotional abuse; family history of mental illness, cognitive impairments, substance abuse, or domestic violence; poverty, familial instability, neighborhood environment, and peer influence); other traumatic events such as exposure to criminal violence, the loss of a loved one, or a natural disaster; experiences of racism or other social or ethnic bias; cultural or religious influences; failures of government or social intervention (e.g., failure to intervene or provide necessary services, placement in poor quality foster care or juvenile detention facilities);

e. medical and mental health history (including hospitalizations, mental and physical illness or injury, trauma, intellectual impairment, alcohol and drug use, pre-natal and birth trauma, malnutrition, developmental delays, and neurological damage). Evidence relating to medical and mental health matters should normally include the symptoms and effect of any illness rather than just solely presenting a formal diagnosis;

f. educational history (including achievement, performance, behavior, and activities), special educational needs (including mental retardation, cognitive limitations and learning disabilities) and opportunity or lack thereof, and activities;

g. military service, (including length and type of service, conduct, special training, combat exposure, health and mental health services);

h. employment and training history (including skills and performance, and barriers to employability);

i. record of prior offenses (adult and juvenile), especially where there is no record, a short record, or a record of non-violent offenses;

j. prior juvenile and adult correctional experience (including conduct while under supervision, in institutions of education or training, and regarding clinical services); and

k. a prior relationship between the client and the victim(s) which might help to explain the offense.

12. In determining what presentation to make concerning sentencing, counsel should consider whether any portion of the defense case could be damaging in and of itself or will open the door to the prosecution's presentation of otherwise inadmissible aggravating evidence. Counsel should pursue all appropriate means (e.g., motions *in limine*) to ensure that the defense case concerning sentencing is constricted as little as possible by this consideration, and should make a full record in order to support any subsequent challenges.

13. Trial counsel should determine at the earliest possible time what aggravating circumstances the prosecution will rely upon in the sentencing phase, any adjudicated or unadjudicated wrongful acts the prosecution intends to prove and the nature and scope of any victim impact evidence the prosecution may present. Counsel at all stages of the case should object to any non-compliance with the rules of discovery and applicable case law in this respect and challenge the adequacy of those rules.

14. Counsel at all stages of the case should carefully consider whether all or part of the evidence the state may seek to introduce in the sentencing phase may appropriately be challenged as improper, unduly prejudicial, misleading or not legally admissible. Counsel should challenge the admissibility of evidence brought in support of an aggravating circumstance that cannot legally be established in the circumstances of the case. Counsel should investigate and present evidence that specifically undermines or mitigates the aggravating circumstances and any other adverse evidence to be presented by the prosecution.

15. If the prosecution is granted leave at any stage of the case to have the client interviewed by witnesses associated with the government, defense counsel should:

- a. carefully consider:
 - i. what legal challenges may appropriately be made to the interview or the conditions surrounding it; and
 - ii. the legal and strategic issues implicated by the client's co-operation or non-cooperation;
- b. ensure that the client understands the significance of any statements made during such an interview, including the possible impact on the sentence and later potential proceedings (such as appeal, subsequent retrial or resentencing); and
- c. attend the interview, unless prevented by court order.

16. Counsel at every stage of the case should take advantage of all appropriate opportunities to argue why life without parole is not a suitable punishment for their particular client.

17. Counsel should make an opening statement.

18. In closing argument, counsel should be specific to the client and should, after outlining the compelling mitigating evidence, explain the significance of the mitigation presented and why it supports a sentence other than life without parole. Counsel's closing argument should be more than a general attack on juvenile life without parole and should not minimize the jury's verdict at guilt.

19. Trial counsel should request jury instructions and verdict forms that ensure that jurors will be able to consider and give effect to all relevant mitigating evidence. Trial counsel should object to instructions or verdict forms that are constitutionally flawed, or are inaccurate, or confusing and should offer alternative instructions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1943 (October 2017).

§2137. Post-Verdict Motions and Formal Sentencing

A. Motion for a New Trial and Other Post-Verdict Motions

1. Counsel should be familiar with the procedures and availability of motions for new trial, for arrest of judgment and for a post-verdict judgment of acquittal, including the time period for filing such motions, the formal requirements of each motion, the evidentiary rules applicable to each motion and the grounds that can be raised.

2. A motion for new trial should be filed in each case where a life without parole sentence is imposed. A motion in arrest of judgment or for a post-verdict judgment of acquittal should be filed in each case in which there exists a colorable basis for the relief sought to be granted.

3. In preparing the motion for new trial, counsel should conduct an intensive and thorough investigation designed to identify and develop: evidence of prejudice arising from any adverse rulings of the trial court; evidence not discovered during the trial that would likely have changed the verdict at either guilt or sentencing phase; evidence of prejudicial error or defect not discovered before the verdict or judgment; and, evidence that would otherwise support an argument that the ends of justice would be served by the granting of a new trial.

4. Counsel should utilize all of the investigative tools described in these standards in conducting the investigation, including the use of fact investigators, mitigation specialists, experts, record requests, discovery requests, compulsory process and motions practice.

5. Recognizing that the post-verdict litigation represents a critical stage of proceedings that requires extensive investigation and development of potentially dispositive claims:

- a. counsel should seek a postponement of formal sentencing for a sufficient period to allow adequate investigation and development of the motion for new trial or other post-verdict motions; and
- b. counsel should seek additional resources sufficient to allow adequate investigation and development of the motion for new trial or other post-verdict motions.

6. In preparing and presenting claims in post-verdict motions, counsel should have particular regard to the need to fully plead the claims and their factual basis in a manner that will preserve the claims for subsequent review. Counsel should request an evidentiary hearing on the motion for new trial in order to present new evidence and preserve claims for appeal.

7. Counsel should prepare post-verdict motions urging that life without parole is not a legally permissible penalty in the circumstances of the case, including that the sentence would be constitutionally excessive, where such arguments are available under existing law, or under a good faith argument for the extension, modification, or reversal of existing law.

8. Counsel should review the court record and ensure that it is complete and that matters relevant to any future review of the case are contained in the record including, for instance, race and gender of jurors in the venire, juror questionnaires, jury questions during deliberations, and all defense proffers appropriate to preserve any defense objections for review.

9. Following formal sentencing, counsel shall continue to conduct an intensive investigation designed to identify and develop evidence not discovered during the trial that would likely have changed the verdict at either the guilt or sentencing phase in order that any available motion for new trial may be filed within one year of the verdict or judgment of the trial court.

B. Preparation for Formal Sentencing and the Sentence Investigation Report

1. In preparing for sentencing, counsel should:

- a. inform the client of the sentencing procedure, its consequences and the next steps in the client's case, including any expected change in the client's representation;

b. maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;

c. inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the statement, if any, to be made to the court, considering the possible consequences that any statement may have upon the sentence to be imposed, any appeal or review, subsequent retrial or trial on other offenses;

d. become familiar with the procedures governing preparation, submission, and verification of the sentence investigation report. In addition, counsel should:

i. consider providing to the report preparer information favorable to the client;

ii. consider whether the client should speak with the person preparing the report; if the decision is made that the client not speak to the report preparer, the client should be advised to exercise his rights to silence and the presence of counsel and the report preparer should be advised that the client is asserting his right not to participate in an interview. If the determination is made for the client to speak to the report preparer, counsel should discuss the interview in advance with the client and attend the interview;

iii. obtain a copy of the sentence investigation report, once completed, and review the completed report with the client;

iv. file a written opposition to the factual contents of the reports where appropriate and seek a contradictory hearing.

C. Obligations of Counsel at Sentencing Hearing and Following Sentencing

1. Counsel should continue to actively advocate for a disposition other than the imposition of a life without parole sentence. Such advocacy should include presenting to the court evidence and argument in favor of any categorical bar to the imposition of a life without parole sentence and in support of an argument that life without parole, in the circumstances of the particular case, is unconstitutionally excessive. Counsel's presentation should not be limited to existing law but should include all good faith arguments for an extension, modification or reversal of existing law.

2. Following the imposition of a sentence of life without parole, counsel should prepare and file a motion for reconsideration of sentence.

3. Upon denial of a motion for reconsideration, counsel should timely file a motion for appeal, including a comprehensive request for transcription of the proceedings and designation of the record as follows:

a. the minutes of all of the proceedings connected with the case;

b. the indictment and any and all proceedings concerning the appointment and/or selection of the grand jury;

c. the transcript of arraignment;

d. the transcript of all pre-trial proceedings regardless of whether defense counsel and the defendant were present;

e. the transcript of any proceeding in which allotment of the case occurred;

f. the transcript of any joint proceedings held with another defendant(s);

g. the transcript of the entirety of *Voir dire*, including the transcript of any communication made by the judge or the court staff whether within or outside the presence of defense counsel;

h. the transcript of all bench conferences, in chambers hearings or charge conferences;

i. the transcript of all argument and instruction;

j. the transcript of all testimony, including testimony at the sentencing phase of the trial;

k. any and all exhibits introduced in connection with the case;

l. the jury questionnaires, verdict forms, polling slips, and verdicts imposed in the case.

4. In the period following the imposition of a sentence of life without parole and the lodging of the appellate record, counsel should continue to actively represent the client's interests, including investigation and development of arguments relevant to a post-sentencing motion for new trial or defendant's sentence investigation report. Counsel should take action to preserve the client's interests in his appeal, state post-conviction, federal habeas corpus and clemency proceedings pending the assignment of appellate counsel.

5. Where appropriate, counsel should timely file a post-sentencing motion for new trial.

6. Counsel shall continue to represent the client until successor counsel assumes responsibility for the representation. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to appellate and post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1954 (October 2017).

§2139. Direct Appeal

A. Duties of Appellate Counsel

1. Appellate counsel should comply with these performance standards, except where clearly inapplicable to the representation of the client during the period of direct appeal, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Appellate counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Appellate counsel should monitor and remain informed of legal developments that may be relevant to the

persuasive presentation of claims on direct appeal and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in federal habeas corpus proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. When identifying potential conflicts, appellate counsel should have particular regard to areas of potential conflict that may arise at this stage of proceedings, including:

a. when the defendant was represented at the trial level by appellate counsel or by an attorney in the same law office as the appellate counsel, and it is asserted by the client that trial counsel provided ineffective representation, or it appears to appellate counsel that trial counsel provided ineffective representation;

b. when it is necessary for the appellate attorney to interview or examine in a post-conviction evidentiary hearing another client of the attorney's office in an effort to substantiate information provided by the first client; and

c. when, in the pursuit of an appeal or post-conviction hearing, it is necessary to assert for the first time that another client of the office committed perjury at trial.

5. Counsel should explain to the client counsel's role, how counsel was appointed to the case, and the meaning and goals of the appeal, and counsel should encourage the client to participate in the appellate process.

6. Counsel shall consult with the client on the matters to be raised on appeal and give genuine consideration to any issue the client wishes to raise on appeal. What claims to raise on appeal, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

7. Appellate counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

8. Appellate counsel should obtain and review all prior counsels' file(s). Appellate counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

9. Appellate counsel should ensure that the record on appeal is complete. If any item is necessary to appellate review but is not included in the record, it is appellate counsel's responsibility to file a motion to supplement the record and to seek to have the briefing schedule stayed pending completion of the record.

10. Appellate counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Appellate counsel should consider whether any potential off-record matters may have an impact on how the appeal is pursued, and what kind of an investigation of the matter is warranted.

11. Appellate counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality juvenile life without parole representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. If an error warranting relief has not yet been presented, Counsel should present it and request error patent review.

12. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied in the state appellate courts, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Counsel should present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's direct appeal open pending the determination of the other case.

13. Petitions and briefs shall conform to all rules of court and shall have a professional appearance, shall advance argument and cite legal authority in support of each contention and shall conform to Blue Book rules of citation. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

14. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument. All arguments on assignments of error should include references by page number, or by any more precise method of location, to the place(s) in the transcript which contains the alleged error.

15. Counsel should not intentionally refer to or argue on the basis of facts outside the record on appeal, unless such facts are matters of common public knowledge based on ordinary human experience or matters of which the court may take judicial notice. If appropriate, counsel should move for the remand of the matter and conduct such evidentiary hearings as may be required to create or supplement a record for review of any claim of error or

argument for excessiveness that is not adequately supported by the record.

16. Where counsel is considering seeking a remand for further hearing, counsel should undertake a full factual investigation of the issue for which the remand would be sought so that the decision as to whether to seek remand may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek remand for further hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if the case is remanded for further hearing.

17. The identification and selection of issues is the responsibility of lead counsel. Lead counsel shall adopt procedures for providing an "issues meeting" between the attorneys handling the case and other relevantly qualified attorneys, including at least one qualified as lead appellate counsel, at which the issues raised in the case and the defense theory on appeal can be discussed. The issues meeting will ordinarily be conducted in the course of a case review meeting under these standards but where this is not possible, the issues meeting should be conducted independently of the case review.

18. Counsel should complete a full review of the records of relevant proceedings and trial counsels' files prior to completing a draft of the brief. Lead counsel shall adopt a procedure for screening the brief, which should include a careful review of the brief by an attorney not involved in drafting the pleading. The reviewing attorney should be qualified as lead appellate counsel.

19. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the issues meeting, the drafting of the brief, the review of the brief and the finalization of the brief. If appellate counsel is unable to prepare the brief within the existing briefing schedule in a manner consistent with these standards and with high quality appellate representation, it is counsel's responsibility to file a motion to extend the briefing schedule.

20. Counsel shall be diligent in expediting the timely submission of the appeal and shall take all steps necessary to reduce delays and time necessary for the processing of appeals which adversely affect the client.

21. Where counsel is unable to provide high quality representation in appellate proceedings in a particular case and the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

22. Following the filing of appellee's brief and before filing a reply brief, a second case review meeting shall be conducted to discuss the defense theory on appeal in light of the issues raised in the original brief, Appellee's brief and the issues to be addressed in reply and at oral argument.

23. Counsel should, no less than two weeks prior to oral argument, where possible, file a reply brief rebutting legal and factual arguments made by the state. The reply brief should not simply repeat the contents of the original brief but should respond directly to the contentions of the

state and any issues arising from the state's brief. Where appropriate, counsel should file a supplemental brief on the merits, seeking leave to do so if the case has already been submitted.

24. Counsel should undertake a detailed and intensive investigation of the matters relevant to the sentence review memorandum. Counsel shall not rely upon the contents of the state's sentence review memorandum without confirming the accuracy of that memorandum. The investigation should be commenced as soon as practicable after counsel is assigned to the case. Where additional favorable information is developed, counsel should seek a remand of the matter for the development of facts relating to whether the sentence is excessive.

25. Counsel shall promptly inform the client of the date, time and place scheduled for oral argument of the appeal as soon as counsel receives notice thereof from the appellate court. Counsel shall not waive oral argument.

26. To prepare for oral argument, counsel should review the record and the briefs of the parties, and should update legal research. If binding dispositive or contrary authority has been published since the filing of the brief, counsel shall disclose the information to the court. Counsel should be prepared to answer questions propounded by the court. In particular, counsel should be prepared to address whether and where the questions presented were preserved in the record, the applicable standards of review and the prejudice associated with the errors alleged.

27. If pertinent and significant authorities come to counsel's attention following oral argument, counsel should bring the authorities to the attention of the court by letter or, where appropriate, should seek leave to file a supplemental brief.

28. Counsel shall promptly inform the client of any decision of the appellate court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision. If the case has been returned to a lower court on remand, counsel should continue in his or her representation (unless and until other counsel has been assigned and formally enrolled) providing any necessary briefing to the court to continue to advocate for the client.

29. Counsel shall timely prepare and file a motion for rehearing, raising all arguments for which a meritorious motion for rehearing can be advanced. Counsel should have particular regard to any changes or developments in the law since the case had been submitted and any errors of fact or law appearing in the decision that may be corrected by reference to the record.

30. The duties of the counsel representing the client on direct appeal ordinarily include filing a petition for certiorari in the Supreme Court of the United States. In developing, drafting and filing a petition for certiorari, appellate counsel should consult with counsel with particular expertise and experience in litigating applications for certiorari before the United States Supreme Court.

31. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

32. In the event that the client's appeal to the Louisiana Supreme Court and application for certiorari to the United States Supreme Court are unsuccessful, appellate counsel shall advise the client of: his or her right to seek state post-conviction relief and federal habeas corpus relief; the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court; the procedure and effect of filing of a petition for post-conviction relief in the state trial court to raise new claims and to exhaust any federal constitutional issues for federal habeas review.

33. Appellate counsel shall, with the client's consent, continue to represent the client for the limited purpose of preserving the client's interests in his state post-conviction, federal habeas corpus and clemency proceedings. Counsel shall carefully explain the limited scope of this representation to the client and provide advice of this limited scope in writing when obtaining the client's consent.

34. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

35. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1955 (October 2017).

§2141. State Post-Conviction and Clemency

A. Duties of Post-Conviction Counsel

1. Post-conviction counsel should comply with these performance standards, except where clearly inapplicable to the representation of the client in the post-conviction period of the case, including the obligations to:

a. maintain close contact with the client regarding litigation developments;

b. continually monitor the client's mental, physical and emotional condition for effects on the client's legal position;

c. keep under continuing review the desirability of modifying prior counsel's theory of the case in light of subsequent developments;

d. take all steps that may be appropriate in the exercise of professional judgment in accordance with these standards to achieve an agreed-upon disposition; and

e. continue an aggressive investigation of all aspects of the case.

2. Post-conviction counsel should be familiar with all state and federal appellate and post-conviction options available to the client, and should consider how any tactical decision might affect later options.

3. Post-conviction counsel should monitor and remain informed of legal developments that may be relevant to the persuasive representation of claims in state post-conviction proceedings, in federal habeas corpus proceedings and in any application for certiorari to the United States Supreme Court as well as the preservation of claims for subsequent review in state and federal proceedings and international legal fora.

a. Counsel should monitor relevant legal developments in and be aware of current legal claims pending in relevant cases in front of the Louisiana Supreme Court, the Fifth Circuit Court of Appeals and the United States Supreme Court.

b. Counsel should monitor relevant legal developments in Louisiana's Courts of Appeal including splits between the circuit courts of appeal.

c. Counsel should monitor relevant legal developments in the superior courts of other states, particularly in the interpretation and application of federal constitutional law.

d. Counsel should monitor relevant legal developments in the federal courts of appeal, including splits between circuit courts of appeal.

e. Counsel should monitor relevant developments in international law.

4. Counsel should explain to the client counsel's role and the meaning and goals of post-conviction and federal habeas corpus proceedings, and counsel should encourage the client to participate in the collateral review process.

5. Counsel shall consult with the client on the matters to be raised in any post-conviction petition or federal application for habeas corpus and give genuine consideration to any issue the client wishes to raise. What claims to raise, and how to raise them, are generally matters entrusted to the discretion of counsel. When counsel decides not to argue all of the issues that his or her client desires to be argued, counsel should inform the client of that decision, of the reasons for the decision, and of his or her right to file a pro se brief.

6. Post-conviction counsel should obtain and review a complete record of all proceedings relevant to the case including the appellate record, the district court file, any file in the court of appeal or supreme court, and the files in any other related or prior proceedings in the cause.

7. Post-conviction counsel should obtain and review all prior counsels' file(s). Post-conviction counsel should retain and preserve prior counsel's files as far as possible in the condition in which they were received until transmitted to successor counsel.

8. Post-conviction counsel should ensure that the record of proceedings available for review is complete. If any item is necessary to post-conviction review but is not included in the record of proceedings, it is post-conviction counsel's responsibility to ensure that the record available for review is supplemented.

9. Post-conviction counsel should interview the client and previous defense team members about the case, including any relevant matters that do not appear in the record. Post-conviction counsel should consider whether any potential off-record matters should have an impact on how post-conviction review is pursued, and what kind of an investigation of the matter is warranted.

10. Post-conviction counsel should seek to investigate and litigate all issues, whether or not previously presented, that are arguably meritorious under the standards applicable to high quality JLWOP representation, including challenges to any overly restrictive procedural rules and any good faith argument for the extension, modification or reversal of existing law. Counsel should undertake a high-quality, independent, exhaustive investigation and should not assume

that investigation of issues by prior counsel has been complete or adequate.

11. The investigation and litigation of claims should encompass all arguably available claims for relief, including those based upon the grounds that:

a. the defendant is in custody or the sentence was imposed in violation of the constitution or laws or treaties of the United States;

b. the conviction was obtained in violation of the constitution of the state of Louisiana;

c. the sentence was obtained in violation of the constitution of the state of Louisiana or is otherwise an illegal sentence;

d. the court exceeded its jurisdiction;

e. the conviction or sentence subjected the defendant to double jeopardy;

f. the limitations on the institution of prosecution had expired;

g. the statute creating the offense for which the defendant was convicted and sentenced is unconstitutional;

h. the conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana;

i. the results of DNA testing performed pursuant to an application granted under La. C. Cr. P. art. 926.1 proves that the petitioner is factually innocent of the crime for which he was convicted;

j. the defendant is otherwise shown to be factually innocent of the crime for which he was convicted or not eligible for a sentence of life without parole; or

k. a sentence of life without parole is unconstitutional for a juvenile.

12. In conducting the investigation, counsel should have particular regard to the possibility that claims for relief may arise from matters not previously fully investigated or litigated, including:

a. the possibility that the state failed to turn over evidence favorable to the defendant and material to his guilt or punishment;

b. the possibility that the state knowingly used false testimony to secure the conviction or sentence;

c. the possibility that the client received ineffective assistance of counsel as to either guilt or sentencing in the course of his representation in the trial court or on appeal;

d. the possibility that the jury's verdict is tainted by issues such as jury misconduct, improper separation of the jury, and false answers on *Voir dire* examination; and

e. the possibility that the client is innocent of the offense charged or not eligible for a sentence of life without parole.

13. In investigating the possibility that the client received ineffective assistance of counsel, post-conviction counsel must review both the record in the case and also conduct a thorough investigation of the facts and circumstances beyond the record in order to determine whether a claim exists that counsel's performance was deficient. As these standards are intended to reflect accepted minimum standards for performance in juvenile life without parole cases, in determining the scope of the investigation to be conducted, post-conviction counsel shall have regard to these standards as they describe the responsibilities of trial

and appellate counsel. Post-conviction counsel shall conduct a sufficiently thorough investigation to determine either that prior counsel's responsibilities were met or to determine the extent of any prejudice arising from the failure to meet those responsibilities.

14. In investigating and developing claims of ineffective assistance of counsel or the suppression of favorable evidence, counsel shall be conscious that evidence will be assessed for its cumulative impact and so should not limit the investigation to those matters that might, in and of themselves, justify relief. Instead, the investigation should extend to those matters which, in combination with others, may justify relief.

15. In investigating, preparing and submitting a petition, counsel should seek such pre-filing discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to a high quality, independent, exhaustive investigation. Counsel should investigate the possibility of and, where appropriate, file an application for DNA testing pursuant to La. C. Cr. P. art. 926.1.

16. Counsel should make every professionally appropriate effort to present issues in a manner that will preserve them for subsequent review. Claims raised should include federal constitutional claims which, in the event that relief is denied, could form the basis for a successful petition for writ of certiorari to the Supreme Court or for a writ of habeas corpus in the federal district court. Where pending claims in another case may be resolved in a manner that would benefit the client, counsel should ensure that the relevant issues are preserved and presented for review in the client's case and, where appropriate, counsel should seek to keep the client's post-conviction proceedings open pending the determination of the other case.

17. Petitions and supporting memoranda shall conform to all rules of court and shall have a professional appearance, conform to acceptable rules of grammar, be free from typographical errors and misspellings, shall advance argument and cite legal authority in support of each contention. Counsel shall utilize out-of-state and federal authority in support of positions when no local authority exists or local authority is contrary to the weight of recent decisions from other jurisdictions. Regardless of the existence of local authority, federal authority should also be relied upon to present and preserve for later review any federal constitutional claims, particularly any applicable decision of the United States Supreme Court.

18. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies.

19. The post-conviction petition should clearly allege a factual basis for each claim which, if established, would entitle the petitioner to relief and clearly allege all facts supporting the claims in the petition. Counsel shall include with the petition all documents and exhibits that would establish or support the factual basis of the petitioner's claims, including but not limited to court records, transcripts, depositions, admissions of fact, affidavits, statements, reports and other records. In determining the scope of the material to be presented in state court, counsel shall have regard to the likelihood that federal review will be limited to

the material presented in state court and so should not refrain from presenting any relevant material unless there are strong strategic reasons to do so.

20. Where counsel raises a claim that has previously been fully litigated in earlier appeal proceedings in the case, counsel shall fully investigate, prepare and submit an argument that the claim is nevertheless eligible for consideration in the interests of justice.

21. Where counsel raises a claim that was not raised in the proceedings leading to conviction or sentence, was not pursued on appeal or was not included in a prior post-conviction petition, counsel shall fully investigate, prepare and submit a claim that the failure to previously raise the claim is excusable.

22. Counsel should complete a full review of the records of relevant proceedings, trial counsels' files and the fruits of the post-conviction investigation prior to completing a draft of the petition.

23. The review of the records and files should be completed a sufficient time before the filing deadline to allow for the drafting of the petition, the review of the petition and the finalization of the petition. If post-conviction counsel is unable to complete the post-conviction investigation and prepare the petition within the existing briefing schedule in a manner consistent with these standards and with high quality post-conviction representation, it is counsel's responsibility to file a motion to extend the filing deadline.

24. Counsel shall be diligent in expediting the timely submission of the post-conviction petition and shall take all steps necessary to reduce delays and time necessary for the processing of petitions which adversely affect the client.

25. Where counsel is unable to provide high quality representation in post-conviction proceedings in a particular case, and the deficiency cannot be remedied then counsel must bring the matter to the attention of the court and seek the relief appropriate to protect the interests of the client. Counsel may be unable to provide high quality representation due to a range of factors: lack of resources, insufficient time, excessive workload, poor health or other personal considerations, inadequate skill or experience etc.

26. Counsel should be aware of the statute of limitations for filing a petition for writ of habeas corpus in federal court, and should file pleadings in state court so as to allow adequate time for preparation and filing of such a petition if state post-conviction relief is denied.

27. Where the state files procedural objections or an answer on the merits, counsel should file a response rebutting legal and factual arguments made by the state. The response brief should not simply repeat the contents of the original petition but should respond directly to the contentions of the state and any issues arising from the state's filing. Where appropriate, counsel should file a supplemental petition or briefing, seeking leave to do so if required.

28. Counsel should seek such discovery, compulsory process, requests for admissions, depositions and other orders as are available and appropriate to the full development and presentation of all claims in the petition and should document the denial of any such attempts to secure facts in support of possible claims.

29. Counsel should request an evidentiary hearing for all claims in which the state does not clearly admit the factual allegations contained in the petition and seek to prove by admissible evidence those factual allegations that support or establish the client's claims for relief.

30. Where counsel is considering seeking an evidentiary hearing, counsel should undertake a full factual investigation of the issue for which the hearing would be sought so that the decision as to whether to seek a hearing may be made in light of the evidence that might be adduced at such a hearing. Where counsel does seek an evidentiary hearing, counsel should ensure that adequate investigation and preparation has been undertaken to allow counsel to promptly litigate the matter if an evidentiary hearing is granted.

31. Following any evidentiary hearing, counsel should file supplemental briefing demonstrating the client's entitlement to relief based upon the petition filed and the evidence adduced at the hearing.

32. Counsel should timely make application for supervisory writs if the trial court dismisses the petition or otherwise denies relief on an application for post-conviction relief. Counsel should take great care to ensure that all writ applications comply with the requirements of the relevant rules of court and present all claims in a manner that will meet the exhaustion requirements applicable in federal habeas corpus proceedings. Counsel should ensure that an adequate record is created in the trial court to justify and encourage the exercise of the supervisory jurisdiction of the reviewing court. Counsel should respond to any state application for supervisory writs or appeal except where exceptional circumstances justify the choice not to respond.

33. A lack of adequate time, resources or expertise is not an adequate reason for failing to make application for supervisory writs or failing to respond to a state application. Where counsel lacks adequate time, resources or expertise, counsel should take all available steps to ensure that the defense team has sufficient time, resources and expertise, including seeking additional counsel. Counsel shall ensure that the role of lack of time or resources upon the decision to file a writ application is reflected in the record.

34. Counsel shall promptly inform the client of the decision of the trial court and any reviewing court in the client's case and shall promptly transmit to the client a copy of the decision. Counsel should accurately inform the client of the courses of action which may be pursued as a result of the decision.

35. The duties of the counsel representing the client in state post-conviction proceedings include filing a petition for certiorari in the Supreme Court of the United States.

36. In preparing and filing a petition for certiorari, counsel should consider the benefit to the client of the support of amici and seek appropriate support where it is in the client's interests.

37. In the event that the client's state post-conviction application is unsuccessful, post-conviction counsel shall advise the client of: his right to seek federal habeas corpus relief; and the one-year statute of limitations for the filing of a petition for a writ of habeas corpus in federal district court. Having regard to tolling, counsel shall advise the client of the actual period of time that will be remaining for filing a

federal petition upon finalization of the state post-conviction proceedings. Counsel shall provide such advice a sufficient period prior to the finalization of state post-conviction proceedings to allow the client to take adequate steps to protect his rights to federal review.

38. Counsel shall take all necessary steps to preserve the client's right to federal review.

39. Adequate representation in federal habeas corpus proceedings will include an investigation of whether state post-conviction counsel provided ineffective assistance in failing to adequately raise a meritorious claim of ineffective assistance of trial or appellate counsel. Just as trial counsel is poorly placed to investigate or litigate his or her own ineffectiveness, state post-conviction counsel may be similarly limited.

40. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other information pertinent to post-conviction proceedings. Counsel should notify the client when the case assignment is concluded.

41. Counsel should closely monitor the client's competence in post-conviction proceedings, having regard to the requirement that the client be sufficiently competent to be lawfully executed and should investigate and litigate this issue where it is possible that the client does not meet the necessary degree of competence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1958 (October 2017).

§2143. Supervision, Review and Consultation

A. Supervision of the Defense Team

1. Primary responsibility for the supervision of the defense team and the team's compliance with these standards rests with lead counsel. Lead counsel shall establish a system for communication, feedback and supervision of the defense team that shall ensure that the team provides high quality representation and that any deficiencies in compliance with the guidelines or standards are promptly identified and remedied. Lead counsel should ensure that all team members are aware of their obligations under the guidelines and performance standards.

2. Primary responsibility for the supervision of experts rests with lead counsel, though this responsibility may be delegated to other counsel who are more directly responsible for working with a particular expert. Counsel supervising an expert shall ensure that appropriate funding is secured and maintained for the expert's services, that the expert performs the requested services in a timely fashion and to a high quality and that the expert's services are promptly invoiced and paid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:148.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Public Defender Board, LR 43:1961 (October 2017).

James T. Dixon, Jr.
State Public Defender

1710#010

RULE

Department of Health Behavior Analyst Board

Continuing Education—Licensed Behavior Analysts and State-Certified Assistant Behavior Analysts (LAC 46:VIII.Chapter 8)

This Rule establishes the requirements for each licensed behavior analyst and state-certified assistant behavior analyst to complete continuing education hours within biennial reporting periods beginning in December 2016. Continuing education is an ongoing process consisting of learning activities that increase professional development.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part VIII. Behavior Analysts

Chapter 8. Continuing Education Requirements for Licensed Behavior Analysts and State- Certified Assistant Behavior Analysts

§803. Requirements

A. For the reporting periods that begin December 2016 and henceforth, 32 credits of continuing professional development will be required in the biennial reporting period for licensed behavior analysts and 20 credits for state-certified assistant behavior analysts. Certificants/licensees should not repeat a continuing education event in order to obtain additional continuing credits. The hours must conform to the distribution listed below.

B. ...

C. Certificants/licensees can accumulate continuing professional development credits in seven categories:

1. academic:

a. completion of graduate-level college or university courses. Course content must be entirely behavior analytic. Courses must be from a United States or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial or national accrediting body, or approved by the board;

b. one academic semester credit is equivalent to 15 hours of continuing education and one academic quarter credit is equivalent to 10 hours of continuing education. Any portion or all of the required number of hours of continuing education may be applied from this category during any two-year certification/licensure period;

c. required documentation is a course syllabus and official transcript;

2. traditional approved events:

a. completion of events sponsored by providers approved by the Behavior Analyst Certification Board (BACB). Any portion or all of the total required number of hours of continuing education may be applied from this category during any two-year certification/licensure period;

b. required documentation is a certificate or letter from the approved continuing education (ACE) provider;

3. non-approved events:

a. completion or instruction of a seminar, colloquium, presentation, conference event, workshop or

symposium not approved by the BACB, only if they relate directly to the practice of behavior analysis. A maximum of 25 percent of the total required number of hours of continuing education may be applied from this category during any two-year certification/licensure period;

b. required documentation is an attestation signed and dated by the certificant/licensee;

c. approval of these events is at the discretion of the board;

4. instruction of continuing education events:

a. instruction by the certificant/licensee of category 1 or 2 continuing education events, on a one-time basis for each event, provided that the certificant/licensee was present for the complete event. A maximum of 50 percent of the total required number of hours of continuing education may come from this category during any two-year certification/licensure period;

b. required documentation is a letter from the department chair on letterhead from the university at which a course was taught or a letter from the approved continuing education (ACE) provider's coordinator;

5. BACB events:

a. credentialing events or activities initiated and pre-approved for CEU by the BACB;

b. a maximum of 25 percent of the total required number of hours of continuing education may come from this category during any two-year certification/licensure reporting period;

c. required documentation is a copy of the email sent from the BACB to the certificant/licensee which states participant has completed the BACB event/activity as well as shows the number of CEUs earned for completion. It is important that the date in which the email was received is displayed, as the CEUs are only valid towards the reporting period in which they were received;

6. passing BACB exam:

a. passing, during the second year of the applicant's certification/licensure period, the BACB examination appropriate to the type of renewal. LBA's may only take the BCBA examination; SCABA's may only take the BCaBA examination for continuing education credit. Passing the appropriate examination shall satisfy the continuing education requirement for the current certification/licensure period;

b. required documentation is a verification letter of passing score from the BACB;

7. scholarly activities:

a. publication of an ABA article in a peer-reviewed journal or service as reviewer or action editor of an ABA article for a peer reviewed journal. A maximum of 25 percent of the total required number of hours of continuing education may come from this category during any two-year certification/licensure period. The credit will only be applied to the reporting period when the article was published or reviewed:

i. one publication = 8 hr.;

ii. one review = 1 hr.;

b. required documentation is a final publication listing certificant/licensee as author, editorial decision letter (for action editor activity), or letter of attestation from action editor (for reviewer activity).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3713.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 42:1514 (September 2016), amended LR 43:1961 (October 2017).

§805. Extensions/Exemptions

A. Certificants/licensees on extended active military service outside the state of Louisiana during the applicable reporting period and who do not engage in delivering behavior analysis services within the state of Louisiana may be granted an extension or an exemption if the board receives a timely confirmation of such status.

B. Certificants/licensees who are unable to fulfill the requirement because of illness or other personal hardship may be granted an extension or an exemption if timely confirmation of such status is received by the board.

C. Behavior analysts or state-certified assistant behavior analysts are exempt from continuing professional development requirements for the remainder of the year for which their license or certification is initially granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3713.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 42:1514 (September 2016), amended LR 43:1962 (October 2017).

§807. Noncompliance

A. ...

B. Failure to fulfill the requirements of the continuing professional development rule shall cause the certificate/license to lapse pursuant to §401 of this Part.

C. If the certificant/licensee fails to meet continuing professional development requirements by the appropriate date, the certificate/license shall be regarded as lapsed at the close of business December 31 of the year for which the certificant/licensee is seeking renewal.

D. The Behavior Analyst Board shall serve written notice of noncompliance on a certificant/licensee determined to be in noncompliance. The notice will invite the certificant/licensee to request a hearing with the board or its representative to claim an exemption or to show compliance. All hearings shall be requested by the certificant/licensee and scheduled by the board in compliance with any time limitations of the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3713.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 42:1515 (September 2016), amended LR 43:1962 (October 2017).

§809. Reinstatement

A. For a period of two years from the date of lapse of the certificate/license, the certificate/license may be renewed, at the approval of the board, upon proof of fulfilling all continuing professional development requirements applicable through the date of reinstatement and upon payment of all fees due under R.S. 37:3714.

B. After a period of two years from the date of lapse of the certificate/license, the certificant/licensee may be renewed, at the approval of the board, if all applicable requirements have been met, along with payment of a fee equivalent to the application fee and renewal fee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:3713-3714.

HISTORICAL NOTE: Promulgated by the Department of Health, Behavior Analyst Board, LR 42:1515 (September 2016), amended LR 43:1962 (October 2017).

Rhonda Boe
Executive Director

1710#001

RULE

Department of Health Board of Dentistry

Fees and Costs; Anesthesia/Analgesia
Administration; and Continuing Education
(LAC 46:XXXIII.122, 128, 301, 411, and 1511)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760(8), the Department of Health, Board of Dentistry has amended LAC 46:XXXIII.122, 128, 301, 411, and 1511.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XXXIII. Dental Health Profession

Chapter 1. General Provisions

§122. Scopes of Practice

A. The board approves of the following specialties:

1. - 7. ...
8. prosthodontics;
9. oral and maxillofacial radiology;

10. any other area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full-time years and which program is accredited by an accreditation agency that is recognized by the United States Department of Education.

B. - C. ...

1. The board finds that terms implying that a dentist is a specialist in some field of dentistry are terms of art indicating that the dentist has completed an accredited post-doctoral educational program in that field of at least two years. Therefore, a licensed dentist seeking specialty recognition must have successfully completed a post-doctoral program in a specialty area of dentistry consisting of at least two full-time years and which is accredited by an accreditation agency that is recognized by the United States Department of Education.

2. - 5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1114 (June 1998), amended LR 28:1776 (August 2002), LR 28:2512 (December 2002), amended by the Department of Health, Board of Dentistry, LR 43:1963 (October 2017).

§128. Provisional Licensure for Dental Healthcare Workers Providing Gratuitous Services

A. - A.3. ...

B. The Board of Dentistry may grant a provisional license not to exceed 60 days in duration for any dentist or dental hygienist who is in good standing in the state of their licensure and who wishes to provide gratuitous services to

patients as part of a continuing education course in which the dental healthcare provider is enrolled as a participant and which services are provided as part of the continuing education course provided.

1. The applicant is verified by the board to be in good standing in the state of licensure where the applicant is licensed.

2. The applicant provides satisfactory documentation to the board that the dental healthcare provider is assigned to provide gratuitous services as part of a continuing education course that meets the requirements of LAC XXXIII.1615.

3. The applicant agrees to render services on a gratuitous basis with no revenue of any kind to be derived whatsoever from the provision of dental services within the state of Louisiana, except that the provider of the continuing education course may accept payment from the dental healthcare provider for the continuing education course.

C. The board may renew this provisional license for no more than an additional 60 days.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(6) and (8) and R.S. 49:953(B).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 32:1227 (July 2006), amended by the Department of Health, Board of Dentistry, LR 43:1963 (October 2017).

Chapter 3. Dentists

§301. Advertising and Soliciting by Dentists

A. - B. ...

C. Approved Specialties. The board approves only the following specialties:

1. - 7. ...
8. prosthodontics;
9. oral and maxillofacial radiology;

10. any other area of dentistry for which a dentist has completed a post-doctoral program consisting of at least two full time years and which program is accredited by an accreditation agency that is recognized by the United States Department of Education.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Adopted by the Department of Health and Human Resources, Board of Dentistry, December 1970, amended 1971, amended and promulgated LR 13:179 (March 1987), amended by Department of Health and Hospitals, Board of Dentistry, LR 15:966 (November 1989), LR 18:739 (July 1992), LR 20:657 (June 1994), LR 21:567 (June 1995), LR 22:23 (January 1996), LR 22:1215 (December 1996), repromulgated LR 23:199 (February 1997), amended LR 23:1524 (November 1997), LR 25:509 (March 1999), LR 25:1476 (August 1999), LR 26:690 (April 2000), LR 27:1890 (November 2001), LR 28:1776 (August 2002), LR 28:2512 (December 2002), LR 30:2305 (October 2004), LR 32:243 (February 2006), LR 37:2150 (July 2011), amended by the Department of Health, Board of Dentistry, LR 43:1963 (October 2017).

Chapter 4. Fees and Costs

Subchapter B. General Fees and Costs

§411. Miscellaneous Fees and Costs

A. - A.9. ...

10. unbound copy of Dental Practice Act—\$25;

11. preapproval of advertising—\$150 per advertisement or per page of a website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:795.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 14:792 (November 1988), amended LR 19:207 (February 1993), LR 28:1778 (August 2002), amended by the Department of Health, Board of Dentistry, LR 43:1963 (October 2017).

Chapter 15. Anesthesia/Analgesia Administration
§1511. Required Facilities, Personnel and Equipment for Sedation Procedures

A. - B. ...

1. The authorized dentist must ensure that every patient receiving nitrous oxide inhalation analgesia, moderate sedation, deep sedation, or general anesthesia is constantly attended.

2. Direct supervision by the authorized dentist is required when nitrous oxide inhalation analgesia, moderate sedation, deep sedation, or general anesthesia is being administered.

3. ...

4. When moderate sedation is being administered one auxiliary who is currently certified in basic life support must be available to assist the dentist in an emergency.

5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:55 (January 2016), amended by the Department of Health, Board of Dentistry, LR 43:1964 (October 2017).

Arthur Hickham, Jr.
Executive Director

1710#006

RULE

**Department of Health
Board of Nursing**

Emergency Action (LAC 46:XLVII.3411)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 37:918, that the Louisiana State Board of Nursing (LSBN) has amended Chapter 34, §3411.H. The insertion of the word *available* allows the LSBN an opportunity to fulfill the request in a timely manner, but without guaranteeing the issue will be heard at the next board hearing panel meeting. At present, LSBN's hearings schedule is such that we are scheduling cases 2-3 months in advance. The additional word will provide clarity for the nurses in our state related to an emergency action meeting.

LAC 46

**PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part XLVII. Nurses: Practical Nurses and Registered Nurses

Chapter 34. Disciplinary Proceedings; Alternative to Disciplinary Proceedings

§3411. Formal Hearing

A. - G.3.e. ...

H. Emergency Action. If the board finds that public health, safety, and welfare requires emergency action and a finding to that effect is incorporated in its order, summary suspension of a license may be ordered by the executive

director or designee pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined at the next available regularly scheduled board meeting.

I. - K.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:918, R.S. 37:921, R.S. 37:922 and R.S. 37:923.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Board of Nursing, LR 7:75 (March 1981), amended by the Department of Health and Hospitals, Board of Nursing, LR 24:1293 (July 1998), LR 31:1586 (July 2005), amended by the Department of Health, Board of Nursing, LR 43:1964 (October 2017).

Dr. Karen C. Lyon, E.D.
Executive Director

1710#007

RULE

**Department of Health
Bureau of Health Services Financing**

Adult Day Health Care—Licensing Standards
(LAC 48:I.Chapter 42)

The Department of Health, Bureau of Health Services Financing has amended LAC 48:I.Chapter 42 in the Medical Assistance Program as authorized by R.S. 36:254 and R.S. 40:2120.41-2120.46. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 42. Adult Day Health Care

Subchapter A. General Provisions

§4201. Introduction

A. ...

B. An ADHC center shall have a written statement describing its philosophy as well as long-term and short-term goals. The ADHC center program statement shall include goals that:

1. - 6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2177 (October 2008), repromulgated LR 34:2622 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1964 (October 2017).

§4203. Definitions

* * *

Accreditation—process by which an ADHC that is owned and operated by a PACE organization with an executed program agreement with CMS/LDH is deemed to meet ADHC licensing requirements.

* * *

Cessation of Business—center is non-operational and/or has stopped offering or providing services to the community.

Change of Ownership (CHOW)—a change in the legal center/entity responsible for the operation of the ADHC center.

* * *

Complaints—allegations of noncompliance with regulations filed by someone other than the center.

Department—the Louisiana Department of Health (LDH) and its representatives.

* * *

Employee—person who performs a job or task for compensation, such as wages or a salary. An employed person may be one who is contracted or one who is hired for a staff position.

Full-Time Equivalent—40 hours of employment per week or the number of hours the center is open per week, whichever is less.

* * *

Governing Body—the person or group of persons that assumes full legal responsibility for determining, implementing and monitoring policies governing the ADHC's total operation, and who is responsible for the day-to-day management of the ADHC program, and shall also insure that all services provided are consistent with accepted standards of practice.

Individualized Service Plan (ISP)—an individualized written program of action for each participant's care and services to be provided by the ADHC center based upon an assessment of the participant.

* * *

Line of Credit—a credit arrangement with a federally insured, licensed lending institution which is established to assure that the center has available funds as needed to continue the operations of the agency and the provision of services to participants. The line of credit shall be issued to the licensed entity and shall be specific to the geographic location shown on the license. For purposes of ADHC licensure, the line of credit shall not be a loan, credit card or a bank balance.

* * *

Non-Operational—the ADHC center is not open for business operations on designated days and hours as stated on the licensing application and business location signage.

* * *

Program of All-Inclusive Care for the Elderly (PACE)—an organization that provides prepaid, capitated, comprehensive health care services.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2177 (October 2008), repromulgated LR 34:2622 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1964 (October 2017).

§4205. Licensure Requirements

A. All ADHC centers shall be licensed by the Department of Health (LDH). LDH is the only licensing authority for ADHC centers in the State of Louisiana. It shall be unlawful to operate an ADHC center without possessing a current, valid license issued by LDH. The license shall:

A.1. - B. ...

1. The center shall always have at least one employee on duty at the business location during the days and hours of operation. Once a participant is admitted, all staff that are

required to provide services shall be on duty during operational hours to assure adequate coverage and care to participants.

2. There shall be sufficient numbers of trained direct care and professional services staff either employed or contracted and available to be assigned to provide care and services to persons receiving services at all times.

3. The center shall have admitted or has provided services to at least two participants in the past 12 months prior to their licensure resurvey.

C. The licensed center is required to abide by and adhere to any state laws, rules, policy and procedure manuals or memorandums pertaining to ADHC centers issued by LDH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008), repromulgated LR 34:2623 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1965 (October 2017).

§4207. Initial License Application Process

A. Each ADHC applicant shall obtain facility need review approval (FNR) prior to submission of an initial application for licensing.

1. - 11. Repealed.

B. After FNR approval is received, an initial application for licensing as an ADHC center shall be obtained from the department. A completed initial license application packet for an ADHC center shall be submitted to and approved by the department prior to an applicant providing ADHC services. An applicant shall submit a completed initial licensing packet to the department, which shall include:

1. a completed ADHC licensure application and the non-refundable licensing fee as established by statute;

2. a copy of the approval letter of the architectural center plans from the Office of the State Fire Marshal;

3. a copy of the on-site inspection report with approval for occupancy by the Office of the State Fire Marshal;

4. a copy of the health inspection report with approval of occupancy report of the center from the Office of Public Health;

5. a copy of state-wide criminal background checks conducted by the Louisiana State Police, or its authorized agent, on all owners;

6. proof of financial viability including:

a. line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000; and

b. general and professional liability insurance of at least \$300,000;

7. if applicable, clinical laboratory improvement amendments (CLIA) certificate or CLIA certificate of waiver;

8. a completed disclosure of ownership and control information form;

9. a floor sketch or drawing of the premises to be licensed;

10. the days and hours of operation; and

11. any other documentation or information required by the department for licensure.

C. If the initial licensing packet is incomplete, the applicant will be notified of the missing information and will

have 90 days to submit the additional requested information. If the additional requested information is not submitted to the department within 90 days, the application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ADHC center shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

D. Once the initial licensing application packet is approved by LDH, the applicant will be sent written notification with instructions for requesting the announced initial licensing survey.

E. An applicant who has received the notification with instructions for requesting the announced initial licensing survey shall notify the department of readiness for an initial licensing survey within 90 days of the date of receipt of that notification. If an applicant fails to notify the department of readiness for an initial licensing survey within 90 days, the initial licensing application will be closed. After an initial licensing application is closed, an applicant who is still interested in becoming an ADHC center shall submit a new initial licensing packet with a new initial licensing fee to start the initial licensing process.

F. Applicants shall be in compliance with all appropriate federal, state, departmental, or local statutes, laws, ordinances, rules, regulations, and fees before the ADHC center will be issued an initial license to operate by LDH.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2178 (October 2008), repromulgated LR 34:2624 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1965 (October 2017).

§4209. Initial Licensing Surveys

A. Prior to the initial license being issued to the ADHC center, an initial licensing survey shall be conducted on-site at the ADHC center to assure compliance with ADHC licensing standards.

B. In the event that the initial licensing survey finds that the ADHC center is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the center. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

C. - D. ...

E. In the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing laws, rules or regulations, but the department, in its sole discretion, determines that the noncompliance does not present a threat to the health, safety, or welfare of the participants, the department may issue a provisional initial license for a period not to exceed six months. The center shall be required to correct all such noncompliance or deficiencies prior to the expiration of the provisional license. If all such noncompliance or deficiencies are determined by the department to be corrected on a follow-up survey, then a full license will be issued. If all such noncompliance or deficiencies are not corrected on the follow-up survey, the

provisional license will expire and the center shall be required to begin the initial licensing process again by submitting a new initial license application packet and fee.

F. The initial licensing survey of an ADHC center shall be an announced survey. Follow-up surveys to the initial licensing surveys are not announced surveys.

G. Once an ADHC center has been issued an initial license, the department may conduct licensing surveys at intervals deemed necessary by the department to determine compliance with licensing regulations; these licensing surveys shall be unannounced.

1. A follow-up survey shall be conducted for any licensing survey where deficiencies have been cited to ensure correction of the deficient practices.

2. The department may issue appropriate sanctions, including, but not limited to:

- a. civil monetary penalties;
- b. directed plans of correction; and
- c. license revocations for deficiencies and noncompliance with any licensing survey.

H. LDH surveyors and staff shall be given access to all areas of the center and all relevant files during any licensing survey. LDH surveyors and staff shall be allowed to interview any center staff or participant as necessary to conduct the survey.

1. - 2.c. Repealed.

I. When issued, the initial ADHC license shall specify the maximum number of participants which may be served by the ADHC center.

J. Plan of Correction. A plan of correction shall be required from an ADHC center for any survey where deficiencies have been cited. The plan of correction shall be filed with HSS within 10 calendar days after the center's receipt of notification and statement of deficiencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2179 (October 2008), repromulgated LR 34:2624 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1966 (October 2017).

§4211. Types of Licenses

A. ...

1. In the event that the initial licensing survey finds that the ADHC center is compliant with all licensing laws and regulations, and is compliant with all other required statutes, laws, ordinances, rules, regulations, and fees, the department shall issue a full license to the center. The license shall be valid until the expiration date shown on the license unless the license is modified, revoked, suspended, or terminated.

2. ...

3. The department may issue a full renewal license to an existing licensed ADHC center who is in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations and fees. The license shall be valid until the expiration date shown on the license, unless the license is modified, revoked, suspended, or terminated.

4. The department, in its sole discretion, may issue a provisional license to an existing licensed ADHC center for

a period not to exceed six months, for the following reasons:

- a. the existing ADHC center has more than five deficient practices or deficiencies cited during any one survey;
- b. the existing ADHC center has more than three validated complaints in one licensed year period;
- c. the existing ADHC center has been issued a deficiency that involved placing a participant at risk for serious harm or death;
- d. the existing ADHC center has failed to correct deficient practices within 60 days of being cited for such deficient practices or at the time of a follow-up survey;
- e. the existing ADHC center is not in substantial compliance with all applicable federal, state, departmental, and local statutes, laws, ordinances, rules, regulations, and fees at the time of renewal of the license.

5. When the department issues a provisional license to an existing licensed ADHC center, the department shall conduct an on-site follow-up survey at the ADHC center prior to the expiration of the provisional license. If that on-site follow-up survey determines that the ADHC center has corrected the deficient practices and has maintained compliance during the period of the provisional license, the department may issue a full license for the remainder of the year until the anniversary date of the ADHC license.

6. If an existing licensed ADHC center has been issued a notice of license revocation, suspension, modification, or termination, and the center's license is due for annual renewal, the department shall deny a license renewal subject to the pending license revocation, suspension, modification, or termination. The denial of renewal of such a license does not affect in any manner the license revocation, suspension, modification or termination.

B. The denial of renewal of a license does not in any manner affect any sanction, civil monetary penalty, or other action imposed by the department against the center.

C. The license for an ADHC center shall be valid for one year from the date of issuance unless revoked, suspended, modified, or terminated prior to that time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2179 (October 2008), repromulgated LR 34:2625 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR:43:1966 (October 2017).

§4212. Accredited Status

A. After initial licensure, an ADHC center may request accreditation. To achieve accredited status, the ADHC shall be required to submit a copy of its current program of all-inclusive care for the elderly (PACE) program agreement to show documented proof of meeting initial and continual compliance with PACE requirements and for each annual renewal of licensure.

B. The department may accept accreditation in lieu of periodic on-site licensing surveys when the center provides documentation to the department that shows:

1. the PACE program agreement is current; and
2. the center remains in substantial compliance with all PACE program agreement requirements.

C. The department may conduct unannounced complaint investigations on all ADHCs, including those with accredited status.

D. There is no waiver of licensure fees for a center that is granted accredited status by the department. An ADHC that is granted accredited status shall pay all initial licensing fees, renewal of licensure fees pursuant to §4213, and any other required fees, to achieve or maintain accredited status. The center shall pay any civil monetary penalties imposed by LDH or may forfeit accredited status.

E. The department may rescind accredited status and may conduct a licensing survey for the following:

1. any substantiated complaint within the preceding 12 months;
2. a change of ownership;
3. issuance of a provisional license in the preceding 12-month period;
4. deficiencies identified in the preceding 12-month period that placed participants at risk for harm;
5. treatment or service resulting in death or serious injury; or
6. a change in geographic location.

F. The ADHC center shall notify HSS upon change in accredited status within two business days.

G. The department will rescind accredited status if the center's PACE Program agreement is terminated.

H. An ADHC center which receives approval for accredited status is subject to, and shall comply with, all provisions of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1967 (October 2017).

§4213. Renewal of License

A. License Renewal Application. The ADHC center shall submit a completed license renewal application packet to the department at least 30 days prior to the expiration of the existing current license. The license renewal application packet shall include:

1. - 4. ...
5. the required license renewal fee;
6. proof of continuous financial viability without interruption including maintenance of a line of credit issued from a federally insured, licensed lending institution in the amount of at least \$50,000;
7. proof of PACE program agreement, if accredited; and
8. any other documentation required by the department.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2180 (October 2008), repromulgated LR 34:2626 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1967 (October 2017).

§4215. Reporting Requirements

A. The following changes, or any combination thereof, shall be reported in writing to the department within five

working days of the occurrence of the change. A change in:

1. ...
2. the geographic or mailing address;
3. - 4. ...

B. Change of Ownership (CHOW). The license of an ADHC center is not transferable to any other ADHC or individual. A license cannot be sold. When a change of ownership occurs, the ADHC center shall notify the Health Standards Section in writing within 15 days prior to the effective date of the CHOW.

1. - 2. ...

3. The new owner shall submit a license application identifying all new information and, for the application to be complete, it shall be submitted with the appropriate CHOW licensing fee.

4. An ADHC center that is under license revocation, renewal of licensure or provisional licensure, may not undergo a CHOW.

C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2180 (October 2008), repromulgated LR 34:2626 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1967 (October 2017).

§4217. Denial of License, Revocation of License, Denial of License Renewal

A. - B. ...

1. The department shall deny an initial license in the event that the initial licensing survey finds that the ADHC center is noncompliant with any licensing laws, rules, ordinances or regulations or with any other required statutes that are a threat to the health, safety, or welfare of the participants.

2. The department shall deny any initial license for any of the reasons designated in §4217.D that a license may be revoked or denied renewal.

3. Repealed.

C. Voluntary Non-Renewal of License. If a center fails to timely renew its license, the license expires on its face and is considered voluntarily surrendered. There are no appeal rights for such surrender or non-renewal of the license, as this is a voluntary action on the part of the center.

D. - D.6.e. ...

7. knowingly making a false statement or providing false, forged, or altered information or documentation to LDH employees or to law enforcement agencies;

8. - 10. ...

11. failure to allow or refusal to allow the department to conduct an investigation or survey or to interview center staff or participants;

12. failure to allow, or refusal to allow, access to authorized departmental personnel to records; or

13. bribery, harassment, or intimidation of any participant designed to cause that participant to use the services of any particular ADHC center.

14. Repealed.

E. In the event an ADHC license is revoked or renewal is denied, any owner, officer, member, manager or director of such ADHC center is prohibited from owning, managing, directing or operating another ADHC center for a period of

two years from the date of the final disposition of the revocation or denial action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2180 (October 2008), repromulgated LR 34:2626 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1968 (October 2017).

§4219. Notice and Appeal of Initial License Denial, Revocation, and Denial of License Renewal

A. Notice of a license denial, license revocation, or denial of license renewal shall be given to the center in writing.

B. The ADHC center has a right to an informal reconsideration of the license denial, license revocation, or denial of license renewal.

1. The ADHC center shall request the informal reconsideration within 15 days of the receipt of the notice of the license denial, license revocation, or denial of license renewal. The request for informal reconsideration shall be in writing and shall be forwarded to the department's Health Standards Section.

2. ...

3. If a timely request is received by HSS, an informal reconsideration shall be scheduled and the center will receive written notification.

4. The center shall have the right to appear in person at the informal reconsideration and may be represented by counsel.

5. Correction of a violation or deficiency which is the basis for the denial, revocation or denial of license renewal, shall not be a basis for reconsideration.

6. The informal reconsideration process is not in lieu of the administrative appeals process and does not extend the time limits for filing an administrative appeal of the license denial, revocation, or denial of license renewal.

C. The ADHC center has a right to an administrative appeal of the license denial, license revocation, or denial of license renewal.

1. The ADHC center shall request the administrative appeal within 30 days of the receipt of the notice of the license denial, license revocation, or denial of license renewal or within 30 days of the receipt of the results of the informal reconsideration, if conducted. The request for administrative appeal shall be in writing and shall be submitted to the Division of Administrative Law (DAL).

2.

3. If a timely request for an administrative appeal is received by the DAL, the license revocation or denial of license renewal will be suspended during the pendency of the appeal. However, if the secretary of the department determines that the violations of the center pose an imminent or immediate threat to the health, safety, or welfare of a participant, the imposition of the license revocation or denial of license renewal may be immediate and may be enforced during the pendency of the administrative appeal. If the secretary of the department makes such a determination, the center will receive written notification.

4. Correction of a violation or a deficiency which is the basis for the denial, revocation, or denial of license renewal, shall not be a basis for the administrative appeal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2181 (October 2008), repromulgated LR 34:2627 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1968 (October 2017).

§4220. Complaint Surveys
(Formerly §4221)

A. The department shall conduct complaint surveys in accordance with R.S. 40:2009.13 et seq.

B. Complaint surveys shall be unannounced surveys.

C. A follow-up survey may be conducted for any complaint survey where deficiencies have been cited to ensure correction of the deficient practices.

D. The department may issue appropriate sanctions including, but not limited to civil monetary penalties, directed plans of correction, and license revocations for deficiencies and noncompliance with any complaint survey.

E. LDH surveyors and staff shall be given access to all areas of the center and all relevant files during any complaint survey. LDH surveyors and staff shall be allowed to interview any ADHC center staff and participant as required to conduct the survey.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008), repromulgated LR 34:2627 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1969 (October 2017).

§4221. Statement of Deficiencies
(Formerly §4223)

A. The following statements of deficiencies issued by the department to the ADHC center shall be posted in a conspicuous place on the licensed premises:

1. the most recent annual survey statement of deficiencies; and

2. any subsequent complaint survey statement of deficiencies.

B. Any statement of deficiencies issued by the department to an ADHC center shall be available for disclosure to the public 30 days after the center submits an acceptable plan of correction to the deficiencies or 90 days after the statement of deficiencies is issued to the center, whichever occurs first.

C. Unless otherwise provided in statute or in these licensing provisions, a center shall have the right to an informal reconsideration of any deficiencies cited as a result of a survey or investigation.

1. Correction of the violation, noncompliance or deficiency shall not be the basis for the reconsideration.

2. The informal reconsideration of the deficiencies shall be requested in writing within 10 calendar days of the ADHC center's receipt of the statement of deficiencies, unless otherwise provided in these standards.

3. The request for informal reconsideration of the deficiencies shall be made to HSS and will be considered timely if received by HSS within 10 calendar days of the center's receipt of the statement deficiencies.

4. If a timely request for an informal reconsideration is received, the department will schedule and conduct the informal reconsideration.

NOTE: Informal reconsiderations of the results of a complaint investigation are conducted as desk reviews.

5. The center shall be notified in writing of the results of the informal reconsideration.

6. Except as provided for complaint surveys pursuant to R.S. 40:2009.13 et seq., and as provided in these licensing provisions for initial license denials, revocations and denial of license renewals, the decision of the informal reconsideration team shall be the final administrative decision regarding the deficiencies.

7. The request for an informal reconsideration of any deficiencies cited as a result of a survey or investigation does not delay submission of the required plan of correction within the prescribed timeframe.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:21482 (October 2008), repromulgated LR 34:2627 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1969 (October 2017).

§4222. Cessation of Business

A. Except as provided in §4223 and §4224 of these licensing regulations, a license shall be immediately null and void if an ADHC center becomes non-operational.

B. A cessation of business is deemed to be effective the date on which the ADHC center ceased offering or providing services to the community and/or is considered non-operational in accordance with the requirements of §4205.

C. Upon the cessation of business, the ADHC center shall immediately return the original license to the department.

D. Cessation of business is deemed to be a voluntary action on the part of the center. The ADHC center does not have a right to appeal a cessation of business.

E. Prior to the effective date of the closure or cessation of business, the ADHC center shall:

1. give 30 days' advance written notice to:

a. each participant or participant's legal representative, if applicable;

b. each participant's physician;

c. Health Standards Section (HSS);

d. Office of Aging and Adult Services (OAAS); and

e. support coordination agency for waiver participants;

2. provide for a safe and orderly discharge and transition of all of the center's participants.

F. In addition to the advance notice, the ADHC center shall submit a written plan for the disposition of participant(s) medical records for approval by the department. The plan shall include the following:

1. the effective date of the closure;

2. provisions that comply with federal and state laws on storage, maintenance, access and confidentiality of the closed center's patients medical records;

3. the name and contact information for the appointed custodian(s) who shall provide the following:

a. access to records and copies of records to the patient or authorized representative, upon presentation of proper authorization(s); and

b. physical and environmental security that protects the records against fire, water, intrusion, unauthorized access, loss and destruction;

4. public notice regarding access to records, in the newspaper with the largest circulation in close proximity to the closing center, at least 15 days prior to the effective date of closure.

G. If an ADHC center fails to follow these procedures, the owners, managers, officers, directors and administrators may be prohibited from opening, managing, directing, operating or owning an ADHC center for a period of two years.

H. Once any ADHC center has ceased doing business, the center shall not provide services until the ADHC center has obtained a new initial ADHC license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1969 (October 2017).

§4223. Inactivation of License due to a Declared Disaster or Emergency

A. An ADHC center licensed in a parish which is the subject of an executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766 may seek to inactivate its license for a period not to exceed one year, provided that the following conditions are met:

1. the licensed center shall submit written notification to HSS within 60 days of the date of the executive order or proclamation of emergency or disaster that:

a. the ADHC center has experienced an interruption in the provisions of services as a result of events that are the subject of such executive order or proclamation of emergency or disaster issued in accordance with R.S. 29:724 or R.S. 29:766;

b. the licensed ADHC center intends to resume operation as an ADHC center in the same service area;

c. includes an attestation that the emergency or disaster is the sole causal factor in the interruption of the provision of services;

d. includes an attestation that all participants have been properly discharged or transferred to another center; and

e. provides a list of each participant and where that participant is discharged or transferred to;

2. the licensed ADHC center resumes operating as a ADHC center in the same service area within one year of the issuance of an executive order or proclamation of emergency or disaster in accordance with R.S. 29:724 or R.S. 29:766;

3. the licensed ADHC center continues to pay all fees and cost due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties; and

4. the licensed ADHC center continues to submit required documentation and information to the department.

B. Upon receiving a completed written request to inactivate an ADHC center license, the department shall issue a notice of inactivation of license to the ADHC center.

C. Upon completion of repairs, renovations, rebuilding or replacement, an ADHC center which has received a notice of inactivation of its license from the department shall be

allowed to reinstate its license upon the following conditions being met.

1. The ADHC center shall submit a written license reinstatement request to the licensing agency of the department 60 days prior to the anticipated date of reopening.

a. The license reinstatement request shall inform the department of the anticipated date of opening, and shall request scheduling of a licensing survey.

b. The license reinstatement request shall include a completed licensing application with appropriate licensing fees.

2. The center resumes operating as an ADHC center in the same service area within one year.

D. Upon receiving a completed written request to reinstate an ADHC center license, the department shall conduct a licensing survey. If the ADHC center meets the requirements for licensure and the requirements under this section, the department shall issue a notice of reinstatement of the ADHC center license.

1. The licensed capacity of the reinstated license shall not exceed the licensed capacity of the ADHC center at the time of the request to inactivate the license.

E. No change of ownership in the ADHC center shall occur until such ADHC center has completed repairs, renovations, rebuilding or replacement construction, and has resumed operations as an ADHC center.

F. The provisions of this section shall not apply to an ADHC center which has voluntarily surrendered its license and ceased operation.

G. Failure to comply with any of the provisions of this section shall be deemed a voluntary surrender of the ADHC center license and any applicable facility need review approval for licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1970 (October 2017).

§4224. Inactivation of License due to a Non-Declared Disaster or Emergency

A. A licensed ADHC center in an area or areas which have been affected by a non-declared emergency or disaster may seek to inactivate its license, provided that the following conditions are met:

1. the licensed ADHC center shall submit written notification to the HSS within 30 days of the date of the non-declared emergency or disaster stating that:

a. the ADHC center has experienced an interruption in the provisions of services as a result of events that are due to a non-declared emergency or disaster;

b. the licensed ADHC center intends to resume operation as a ADHC center in the same service area;

c. the licensed ADHC center attests that the emergency or disaster is the sole causal factor in the interruption of the provision of services; and

d. the licensed ADHC center's initial request to inactivate does not exceed one year for the completion of repairs, renovations, rebuilding or replacement of the center;

NOTE: Pursuant to these provisions, an extension of the 30 day deadline for initiation of request may be granted at the discretion of the department.

2. the licensed ADHC center continues to pay all fees and costs due and owed to the department including, but not limited to, annual licensing fees and outstanding civil monetary penalties and/or civil fines; and

3. the licensed ADHC center continues to submit required documentation and information to the department, including, but not limited to cost reports.

B. Upon receiving a completed written request to temporarily inactivate an ADHC license, the department shall issue a notice of inactivation of license to the ADHC center.

C. Upon center's receipt of the department's approval of request to inactivate the center's license, the center shall have 90 days to submit plans for the repairs, renovations, rebuilding or replacement of the center, if applicable, to OSFM and OPH as required.

D. The licensed ADHC center shall resume operating as an ADHC center in the same service area within one year of the approval of renovation/construction plans by OSFM and OPH as required.

EXCEPTION: If the center requires an extension of this timeframe due to circumstances beyond the center's control, the department will consider an extended time period to complete construction or repairs. Such written request for extension shall show the ADHC center's active efforts to complete construction or repairs and the reasons for request for extension of center's inactive license. Any approval for extension is at the sole discretion of the department.

E. Upon completion of repairs, renovations, rebuilding or replacement of the center, an ADHC which has received a notice of inactivation of its license from the department shall be allowed to reinstate its license upon the following conditions being met:

1. the ADHC center shall submit a written license reinstatement request to the licensing agency of the department;

2. the license reinstatement request shall inform the department of the anticipated date of opening and shall request scheduling of a licensing or physical environment survey, where applicable; and

3. the license reinstatement request shall include a completed licensing application with appropriate licensing fees.

F. Upon receiving a completed written request to reinstate an ADHC license, the department may conduct a licensing or physical environment survey. The department may issue a notice of reinstatement if the center has met the requirements for licensure including the requirements of this Subsection.

G. No change of ownership in the ADHC center shall occur until such ADHC center has completed repairs, renovations, rebuilding or replacement construction and has resumed operations as an ADHC center.

H. The provisions of this subsection shall not apply to an ADHC center which has voluntarily surrendered its license and ceased operation.

I. Failure to comply with any of the provisions of this Subsection shall be deemed a voluntary surrender of the ADHC license.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 43:1970 (October 2017).

Subchapter B. Administration and Organization

§4225. Governing Body

A. - A.4. ...

5. The governing body may be composed of a single person or owner who shall assume all responsibilities of the governing body. At least twice a year, such single person or owner shall have documentation of reviewing and meeting the requirements pursuant to §4225.B.

B. Governing Body Responsibilities. The governing body of an ADHC center shall:

1. ensure the center's continual compliance and conformity with all relevant federal, state, parish and municipal laws and regulations;

2. ensure that the center is adequately funded and fiscally sound;

3. review and approve the center's annual budget;

4. ensure that the center is housed, maintained, staffed and equipped appropriately considering the nature of the program;

5. designate a person to act as the director and delegate sufficient authority to this person to manage the center and to insure that all services provided are consistent with accepted standards of practice;

6. formulate and annually review, in consultation with the director, written policies concerning the center's philosophy, goals, current services, personnel practices and fiscal management;

7. annually evaluate the director's performance;

8. have the authority to dismiss the director;

9. meet with designated representatives of the department whenever required to do so; and

10. inform designated representatives of the department prior to initiating any substantial changes in the program, services or physical plant of the center.

11. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008), repromulgated LR 34:2628 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1971 (October 2017).

§4227. Policy and Procedures

A. - B.6. ...

a. the LDH toll-free telephone number for registering complaints shall be posted conspicuously in public areas of the ADHC center;

B.7. - C.1. ...

2. shall be accessible to center staff or to any representative of the Department of Health conducting an audit, survey, monitoring activity, or research and quality assurance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2182 (October 2008), repromulgated LR 34:2628 (December 2008), amended by the Department of Health

and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1971 (October 2017).

§4233. Participant Case Records

- A. ...
- B. The participant's case record shall include:
1. - 6.b. ...
 7. any grievances or complaints filed by the participant and the resolution or disposition of these grievances or complaints;
 8. a log of the participant's attendance and absence;
 9. a physician's signed and dated orders for medication, treatment, diet, and/or restorative and special medical procedures required for the safety and well-being of the participant;
 10. progress notes that:
 - a. document the delivery of all services identified in the individualized service plan;
 - b. document that each staff member is carrying out the approaches identified in the individualized service plan that he/she is responsible for;
 - c. record the progress being made and discuss whether or not the approaches in the individualized service plan are working;
 - d. record any changes in the participant's medical condition, behavior or home situation which may indicate a need for a change in the individualized service plan; and
 - e. document the completion of incident reports, when appropriate; and
- NOTE: Each individual responsible for providing direct services shall record progress notes at least weekly, but any changes to the participant's condition or normal routine should be documented on the day of the occurrence.
11. discharge planning and referral.
- 11.a. - 12. Repealed.

- C. ...
- D. The medications and treatments administered to participants at the center shall be charted by the appropriate staff.
- E. The center may produce, maintain and/or store participant case records either electronically or in paper form.
- F. The center shall ensure that participant case records are available to staff who are directly involved with participant care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2183 (October 2008), repromulgated LR 34:2629 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1972 (October 2017).

§4235. Retention of Records

- A. ...
- B. All records concerning past or present medical conditions of participants are confidential and shall be maintained in compliance with the provisions of the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The expressed written consent of the participant shall be obtained prior to the disclosure of medical information regarding the participant.
- C. - D. ...
- E. An ADHC center's records may be produced, maintained and/or stored in either an electronic or paper

form and shall be producible upon request by the department or its employees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2184 (October 2008), repromulgated LR 34:2629 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1972 (October 2017).

Subchapter C. Participant Rights

§4239. Statement of Rights

A. Each participant shall be informed of his/her rights and responsibilities regarding the ADHC center. The regulations of the ADHC center and all rules governing participant conduct and behavior shall be fully explained to the participant. Before or upon admission, the ADHC center shall provide a copy of the participant rights document to each participant. A signed and dated acknowledgment form shall be filed in each participant's record.

B. If the ADHC center changes its participant rights policies, a signed and dated acknowledgment form shall be filed in each participant's record.

C. - C.2. ...

D. The participant rights document shall include at least the following items:

1. - 1.b. ...
 - c. the center's days and hours of operation;
 2. - 4. ...
 5. the right to be free from mental, physical or verbal abuse;
 6. the right to be free from coercion; and
 - a. - d. Repealed.
 7. the right to be free from restraints. ADHC centers are prohibited from the use of any restraints;
- D.8. - G. ...

1. The participant has been interdicted in a court of law. In such cases, the ADHC center shall ensure that the participant's rights devolve to the curator/curatrix of record. The ADHC center shall obtain an official document verifying that the participant has indeed been interdicted and the interdiction shall be documented on the inside front cover of the participant's record.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2184 (October 2008), repromulgated LR 34:2630 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1972 (October 2017).

Subchapter D. ADHC Center Services

§4243. Core Services

A. At a minimum, each center shall provide the following services:

1. - 7.b. ...
 - c. initiating and developing a self-administration of medication plan for the ADHC center which is individualized for each participant for whom it is indicated; and
8. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2185 (October 2008), repromulgated LR

34:2631 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1972 (October 2017).

§4245. Transportation Requirements

A. The center shall provide transportation to and from the ADHC center at the beginning and end of the program day. The center shall comply with the following requirements governing transportation.

1. ...

2. The center shall conform to all state laws and regulations pertaining to drivers, vehicles and insurance.

B. The driver, whether directly employed or provided by third-party contract, shall hold a valid chauffeur's license or commercial driver license (CDL), if applicable with passenger endorsement.

1. The driver shall meet personal and health qualifications of other staff and receive necessary and appropriate training to ensure competence to perform duties assigned.

C. - D. ...

E. The vehicle shall be maintained in operating condition.

F. There shall be at least one staff member in the vehicle who is trained in first-aid and cardio pulmonary resuscitation (CPR) whether transportation is provided by center-owned transportation or by a third-party commercial proprietor.

G. Centers shall provide transportation to any participant within their licensed region, but no participant, regardless of their region of origin, may be in transport for more than one hour on any single trip.

1. If the center develops a policy that establishes a limited mileage radius for transporting participants, that policy shall be submitted to LDH for review and approval prior to the center being allowed to limit transportation for participants.

H. - H.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2186 (October 2008), repromulgated LR 34:2631 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1973 (October 2017).

Subchapter E. Participant Care

§4251. Nursing Services

A. ...

B. A licensed registered nurse (RN) shall serve on the interdisciplinary (ID) team and shall monitor the overall health needs of the participants. The RN serves as a liaison between the participant and medical resources, including the treating physician.

1. The RN's responsibilities include medication review for each participant at least monthly and when there is a change in the medication regimen to:

B.1.a. - E. ...

F. The RN shall give in-service training to both staff and participants on health related matters at least quarterly.

G. - H. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health

Services Financing, LR 34:2186 (October 2008), repromulgated LR 34:2632 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1973 (October 2017).

§4253. Nutrition Services

A. There shall be a hot, nutritious and palatable noon meal served daily which provides one-third of the recommended dietary allowances (RDA) as established by the National Research Council and American Dietetic Association. Accommodations shall be made for participants with special diets.

1. - 2. ...

B. Menus shall be varied and planned and approved well in advance by a licensed registered dietitian. Any substitutions shall be of comparable nutritional value and documented.

C. - E. ...

F. A licensed registered dietitian shall:

F.1. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2187 (October 2008), repromulgated LR 34:2632 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1973 (October 2017).

Subchapter F. Human Resources

§4259. Personnel Policies

A. An ADHC center shall have personnel policies that include:

1. - 3. ...

a. policies shall be in accordance with state rules, laws and regulations for employees, either contracted or directly employed, and volunteers;

4. ...

5. abuse reporting procedures that require all employees to report any incidents of abuse or neglect in accordance with state law, whether the abuse or mistreatment is committed by another staff member, a family member or any other person;

6. clarification of the center's prohibited use of social media. The policy shall ensure that all staff, either contracted or directly employed, receive training relative to the restrictive use of social media and include, at a minimum, ensuring confidentiality of participant information and preservation of participant dignity and respect, including protection of participant privacy and personal and property rights; and

7. prevention of discrimination.

B. - C. ...

1. A center shall obtain written references from three persons (or prepare documentation based on telephone contacts with three persons) prior to making an offer of employment. The names of the references and a signed release shall be obtained from the potential employee.

2. A center shall comply with the provisions of R.S. 40:2120.41-2120.47 and the rules regarding the direct service worker (DSW) registry prior to making an offer of employment to a direct care staff applicant.

3. A center shall obtain a state-wide criminal background check conducted by the Louisiana State Police, or its designee, prior to making an offer of employment to a direct care staff applicant in accordance with applicable state laws.

a. The center shall have documentation on the final disposition of all charges that bar employment pursuant to applicable state law.

D. ...

1. For any person who interacts with participants, the performance evaluation procedures shall address the quality and nature of a staff member's interactions with participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2187 (October 2008), repromulgated LR 34:2633 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1973 (October 2017).

§4261. Orientation and Training

A. A center's orientation program shall provide training for any new direct care staff, either contracted or employed, to acquaint them with the philosophy, organization, program, practices and goals of the center. The orientation shall also include instruction in safety and emergency procedures as well as the specific responsibilities of the employee's job.

B. A center shall document that all employees, either contracted or staff, receive training on an annual basis in:

1. - 7. ...

8. the center's policy on the prohibited use of social media.

C. ...

D. A new direct care staff employee shall not be assigned to carry out a participant's care until competency has been demonstrated and documented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2187 (October 2008), repromulgated LR 34:2633 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1974 (October 2017).

§4263. Personnel Files

A. In accordance with §4259, an ADHC center shall have a personnel file for each employee, either contracted or staff that contains:

1. ...

2. the statewide criminal background history checks;

3. documentation of proof of DSW registry checks;

4. reference letters from former employer(s) and personal references or written documentation based on telephone contact with such references;

5. any required medical examinations;

6. evidence of applicable professional credentials/certifications according to state law;

7. annual performance evaluations;

8. personnel actions, other appropriate materials, reports and notes relating to the individual's employment with the center; and

9. the employee's starting and termination dates.

B. An ADHC center shall retain an employee's personnel file for at least three years after the employee's termination of employment.

C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008), repromulgated LR

34:2633 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1974 (October 2017).

Subchapter G. Center Responsibilities

§4265. General Provisions

A. - K. ...

L. The center shall make available to the department any information, which the center is required to have under these standards and is reasonably related to the assessment of compliance with these standards. The participant's rights shall not be considered abridged by this requirement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008), repromulgated LR 34:2633 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1974 (October 2017).

§4267. Staffing Requirements

A. Staff at ADHC centers shall meet the following education and experience requirements. All college degrees shall be from a nationally accredited institution of higher education as defined in §102(b) of the Higher Education Act of 1965 as amended. The following "key" staff positions are required and subject to the provisions listed below.

1. Director. The director shall have a bachelor's degree in a human services-related field, such as social work, nursing, education or psychology. Eight years of supervisory experience working in a human services-related field may be substituted for the bachelor's degree.

a. - b. Repealed.

2. Nurse. The center shall employ one or more RN or LPN who shall be available to provide medical care and supervision services as required by all participants. The RN or LPN shall be on the premises daily for at least 8 hours or the number of hours the center is open, or during the time participants are present at the center, whichever is less. Nurses shall have a current Louisiana state nursing license.

3. Social Service Designee/Social Worker. The center shall designate at least one staff person who shall be employed at least 10 hours a week to serve as the social services designee or social worker.

a. The social services designee shall have, at a minimum, a bachelor's degree in a human service-related field such as psychology, sociology, education, or counseling. Two years of experience in a human service-related field may be substituted for each year of college.

b. The social worker shall have a bachelor's or master's degree in social work.

4. Program Manager. The center shall designate at least one staff member who shall be employed at least 10 hours a week to be responsible for carrying out the center's individualized program for each participant.

B. ...

1. Food Service Supervisor. The center shall designate one staff member who shall be employed at least 10 hours a week who shall be responsible for meal preparation and/or serving. The food service supervisor shall have ServSafe® certification.

2. *Direct Service Worker*—an unlicensed person who provides personal care or other services and support to persons with disabilities or to the elderly to enhance their well-being, and who is involved in face-to-face direct contact with the participant.

3. Volunteers. Volunteers and student interns are considered a supplement to the required staffing component. A center which uses volunteers or student interns on a regular basis shall have a written plan for using these resources. This plan shall be given to all volunteers and interns and it shall indicate that all volunteers and interns shall be:

B.3.a. - D.2. ...

3. A staff member who is certified in CPR shall be on the premises at all times while participants are present.

E. Centers with a licensed capacity of 15 or fewer participants may designate one full-time staff person or full-time equivalent person to fill up to three "key staff" positions, and shall employ at least one full-time person or full-time equivalent to fulfill key staff requirements.

F. Centers with a licensed capacity to serve 16-30 participants shall employ at least two full-time persons or full-time equivalents to fulfill key staff requirements, and may designate one full-time staff person or full-time equivalent person to fill up to, but no more than, two "key staff" positions.

G. Centers with a licensed capacity to serve more than 30 participants shall employ at least three full-time persons or full-time equivalents to fill key staff positions. Each key staff position shall be filled with a full-time person or full-time equivalent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2188 (October 2008), repromulgated LR 34:2634 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 38:2373 (September 2012), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1974 (October 2017).

§4269. Incident Reports

A. - D.5. ...

E. Incident reports shall be reviewed by the director, his designee or a medical professional within 24 hours of the occurrence. A qualified professional shall recommend action, in a timely manner, as indicated by the consequences of the incident.

F. - F.4. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2189 (October 2008), repromulgated LR 34:2635 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1975 (October 2017).

Subchapter H. Direct Service Management

§4277. Interdisciplinary Team Responsibilities

A. ...

B. Prior to the individual staffing of a participant by the ID team, each team member shall complete an assessment to be used at the team meeting. This assessment shall, at a minimum, include a physical assessment and a social evaluation.

C. The ID team shall meet, reassess, and reevaluate each participant at least quarterly to review the individualized service plan to ensure that it is sufficient for each participant.

D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2190 (October 2008), repromulgated LR 34:2636 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1975 (October 2017).

Subchapter I. Emergency and Safety

§4285. Emergency and Safety Procedures

A. - C.1. ...

D. A center shall immediately notify the department and other appropriate agencies of any fire, disaster or other emergency which may present a danger to participants or require their evacuation from the center.

E. At any time that the ADHC has an interruption in services or a change in the licensed location due to an emergency situation, the center shall notify HSS no later than the next stated business day.

F. There shall be a policy and procedure that insures the notification of family members or responsible parties whenever an emergency occurs for an individual participant.

G. Upon the identification of the non-responsiveness of a participant at the center, the center's staff shall implement the emergency medical procedures and notify the participant's family members and other medical personnel.

H. A center shall conduct emergency drills at least once every three months.

I. A center shall make every effort to ensure that staff and participants recognize the nature and importance of such drills.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2191 (October 2008), repromulgated LR 34:2637 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1975 (October 2017).

§4287. General Safety Practices

A. - F. ...

G. All exterior and interior doors used by participants shall be at least 32 inches wide.

H. All hallways/corridors shall be at least 36 inches wide.

I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2191 (October 2008), repromulgated LR 34:2637 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1975 (October 2017).

Subchapter J. Physical Environment

§4293. ADHC Furnishings

A. The center shall be furnished so as to meet the needs of the participants. All furnishings and equipment shall be kept clean and in good repair.

B. ...

C. Dining Area. Furnishings shall include tables and comfortable chairs sufficient in number to serve all participants. Meals may be served either cafeteria style or directly at the table depending upon the method of food preparation or physical condition of the participants.

D. Kitchen. If the center has a kitchen area, it shall meet all health and sanitation requirements and shall be of sufficient size to accommodate meal preparation for the proposed number of participants.

E. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2192 (October 2008), repromulgated LR 34:2638 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1975 (October 2017).

§4295. Location of Center

A. An adult day health care center that is located within any center or program that is also licensed by the department shall have its own identifiable staff, space, and storage. These centers shall meet specific requirements if they are located within the same physical location as another program that is also licensed by the department.

1. The program or center within which the ADHC center is located shall meet the requirements of its own license.

B. - D.1. ...

2. If space to be used for the ADHC center is nursing center bedroom space, the number of beds associated with the space occupied by the ADHC program shall be reduced from the licensed capacity of the nursing center.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2120.41-46.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 34:2192 (October 2008), repromulgated LR 34:2638 (December 2008), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1976 (October 2017).

Rebekah E. Gee, MD, MPH
Secretary

1710#061

RULE

Department of Health Bureau of Health Services Financing

Adult Residential Care Providers Licensing Standards (LAC 48:I.Chapter 68)

The Department of Health, Bureau of Health Services Financing has amended LAC 48:I.Chapter 68 governing the licensing standards for adult residential care providers as authorized by R.S. 36:254 and R.S. 40:2166.1-2166.8 et seq. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 68. Adult Residential Care Providers

Subchapter A. General Provisions

§6803. Definitions and Abbreviations

* * *

Direct Care Staff—unlicensed staff who provide personal care or other services and support to persons with disabilities, or to the elderly to enhance their well-being, and who are involved in face-to-face direct contact with the participant.

* * *

Specialized Dementia Care Program—as defined in R.S. 40:1101.2, a special program or unit that segregates residents with a diagnosis of probable Alzheimer's disease or a related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area; and that advertises, markets, or otherwise promotes the ARCP as providing specialized Alzheimer's/dementia care services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254, R.S. 40:2166.1-2166.8 and R.S. 40:1101.2.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1086 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1976 (October 2017).

Subchapter B. Administration and Organization

§6829. Policy and Procedures

A. - B.4. ...

5. abuse reporting procedures that require all employees to report any incidents of abuse or mistreatment whether that abuse or mistreatment is done by another staff member, a family member, a resident or any other person;

6. a policy to prevent discrimination;

7. a policy that addresses the prohibitive use of social media;

8. a policy for conducting statewide criminal background history checks; and

9. a policy for checking the Direct Service Worker Registry and documentation of such checks.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1095 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1976 (October 2017).

Subchapter F. Requirements Related to Staff, Record-Keeping and Incident Reports

§6863. General Provisions

A. - F. ...

G. Criminal history checks and offers of employment shall be completed in accordance with R.S. 40:1203.2.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1105 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1976 (October 2017).

§6865. Staffing Requirements

A. - A.1.c.i.(c). ...

ii. For levels 3 and 4, the director shall meet one of the following criteria upon date of hire:

(a). a bachelor's degree plus two years of administrative experience in the fields of health, social services, geriatrics, management or administration;

(b). in lieu of a bachelor's degree, six years of administrative experience in health, social services, geriatrics, management or administration;

(c). a master's degree in geriatrics, health care, human service related field, management or administration; or

(d). be a licensed nursing facility administrator.

A.1.c.iii. - B.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1105 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1977 (October 2017).

§6867. Staff Training

A. - A.2. ...

3. Orientation shall be completed within 14 days of hire and shall include, in addition to the topics listed in §6867.B, the following topics:

A.3.a. - B.6. ...

C. Training for Direct Care Staff

1. In addition to the topics listed in §6867.A.3 and §6867.B, orientation for direct care staff shall include an evaluation to ensure competence to provide ADL and IADL assistance. A new employee shall not be assigned to carry out a resident's PCSP until competency has been demonstrated and documented.

2. - 4. ...

5. The requirements of §6867.C.1 may qualify as the first year's annual training requirements. However, normal supervision shall not be considered to meet this requirement on an annual basis.

D. Continuing Education for Directors

1. All directors shall obtain 12 continuing education units per year that have been approved by any one of the following organizations:

a. Louisiana Assisted Living Association (LALA);

b. Louisiana Board of Examiners of Nursing Facility Administrators;

c. LeadingAge Gulf States;

d. Louisiana Nursing Home Association (LNHA);

or

e. any of the national assisted living associations, including:

i. National Center for Assisted Living (NCAL);

ii. Argentum (formerly ALFA); or

iii. LeadingAge;

2. Topics shall include, but not be limited to:

a. person-centered care;

b. specialty training in the population served;

c. supervisory/management techniques; and

d. geriatrics.

3. - 4. Repealed.

E. - F.10.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1106 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1977 (October 2017).

Subchapter H. Physical Environment

§6891. Resident Personal Space

A. - C.9. ...

D. Requirements for Resident Apartments in levels 3 and 4

1. - 5. ...

a. It is recognized that there may be more individuals in an ARCP due to the resident and a spouse or partner sharing a living unit than is listed as the total licensed capacity.

6. - 10. ...

11. Kitchenettes

a. For each apartment, the ARCP shall provide, at a minimum, a small refrigerator, a wall cabinet for food storage, a small bar-type sink, and a counter with workspace and electrical outlets, a small cooking appliance, for example, a microwave or a two-burner cook top.

11.b. - 13. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and R.S. 40:2166.1-2166.8.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 41:1115 (June 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 43:1977 (October 2017).

Rebekah E. Gee MD, MPH
Secretary

1710#062

RULE

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services
and
Office for Citizens with Developmental Disabilities**

Home and Community-Based Services Waivers
Standards for Participation
(LAC 50:XXI.101, 301, 305, and Chapter 9)

The Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities have amended LAC 50:XXI.101, §301 and §305 and adopted Chapter 9 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50
PUBLIC HEALTH—MEDICAL ASSISTANCE
Part XXI. Home and Community Based Services
Waivers

Subpart 1. General Provisions

Chapter 1. Freedom of Choice

§101. General Provisions

A. The Department of Health may remove a service provider from the waiver provider freedom of choice list and offer freedom of choice to waiver participants when:

1. - 3. ...

B. The department may offer recipients the freedom to choose another provider if/when the owner(s), operator(s), or member(s) of the governing body of the provider agency is/are under investigation related to:

1. bribery or extortion;
2. tax evasion or tax fraud;
3. money laundering;
4. securities or exchange fraud;
5. wire or mail fraud;
6. violence against a person;
7. act(s) against the aged, children or infirmed; or
8. any crime involving public funds

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 40:1098(June 2014), amended by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1978 (October 2017).

Chapter 3. Eligibility

§301. Termination of Coverage for Displaced Recipients

A. When a declared disaster occurs and recipients relocate out of state due to the declared disaster, Medicaid coverage of the services they are receiving in home and community-based waivers, shall be terminated under either of the following circumstances:

1. the participant fails to return to Louisiana within 90 days following the initial identified date of the declared disaster; or

EXCEPTION: The department may extend this timeframe due to extenuating circumstances.

2. the participant relocates with no intention of returning to Louisiana.

B. - E.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Community Supports and Services, LR 29:1829 (September 2003), amended by the Department of Health and Hospitals, Office of the Secretary, Office for Citizens with Developmental Disabilities and the Division of Long Term Supports and Services, LR 34:1627 (August 2008), amended by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1978 (October 2017).

§305. Continued Eligibility

A. Home and community-based providers shall report to the operating agency when/if it becomes known to the agency that a participant's status has changed such that the

participant no longer meets programmatic or financial eligibility requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1978 (October 2017).

Chapter 9. Provider Requirements

Subchapter A. General Provisions

§901. Settings Requirements for Service Delivery

A. All home and community-based services (HCBS) delivered through a 1915(c) waiver must be provided in settings with the following qualities:

1. the setting is integrated in and supports full access of waiver participants to the greater community, including opportunities to:

- a. seek employment and work in competitive integrated settings;
- b. control personal resources;
- c. engage in community life; and
- d. receive services in the community to the same degree of access as individuals not receiving Medicaid home and community-based services;

2. the setting is selected by the participant from among setting options including non-disability specific settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and are based on the participant's needs, preferences, and, for residential settings, resources available for room and board;

3. the setting ensures a participant's rights of privacy, dignity and respect, and freedom from coercion and restraint;

4. the setting optimizes, but does not regiment, individual initiative, autonomy, and independence in making life choices, including but not limited to, daily activities, physical environment, and with whom to interact; and

5. the setting facilitates individual choice regarding services and supports, and who provides them.

B. In a provider-owned or controlled non-residential setting, in addition to the qualities listed above, the following additional conditions must be met:

1. participants shall have the freedom and support to control their own schedules and activities, and have access to food at any time to the same extent as participants not receiving Medicaid home and community-based waiver services;

2. participants shall be able to have visitors of their choosing at any time to the same extent as participants not receiving Medicaid home and community-based waiver services; and

3. the setting shall be physically accessible to the participant.

C. In a provider-owned or controlled residential setting, in addition to the qualities above, the following additional conditions must be met.

1. The unit or dwelling shall be a specific physical place that can be owned, rented or occupied under a legally enforceable agreement by the individual receiving services, and the individual has, at a minimum, the same responsibilities and protections from eviction that tenants have under the landlord/tenant law of the state, county, city,

or other designated entity. For settings in which landlord tenant laws do not apply, the state must ensure that a lease, residency agreement or other form of written agreement will be in place for each HCBS participant, and that the document provides protections that address eviction processes and appeals comparable to those provided under the jurisdiction's landlord tenant law.

2. Each participant shall have privacy in their sleeping or living unit.

a. Units shall have entrance doors lockable by the participant, with only appropriate staff having keys to doors.

b. Participants sharing units shall have a choice of roommates in that setting.

c. Participants shall have the freedom to furnish and decorate their sleeping or living units within the lease or other agreement.

D. Providers shall work with the department to timely address and remediate any identified instances of non-compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1978 (October 2017).

§903. Electronic Visit Verification

A. An electronic visit verification (EVV) system must be used for automated scheduling, time and attendance tracking and billing for home and community-based services.

1. Home and community-based waiver providers identified by the department shall use:

a. the EVV system designated by the department, or

b. an alternate system that:

i. has successfully passed the data integration process to connect to the designated EVV system, and

ii. is approved by the department.

2. Reimbursement for services may be withheld or denied if a provider:

a. fails to use the EVV system, or

b. uses a system not in compliance with Medicaid's policies and procedures for EVV.

3. Requirements for proper use of the EVV system are outlined in the respective program's Medicaid provider manual. All providers of home and community-based waivers shall comply with the respective program's Medicaid provider manual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1979 (October 2017).

§905. Critical Incident Reporting

A. Support coordination and direct service provider types are responsible for documenting the occurrence of incidents or accidents that affect the health and welfare of the participant, and for completing an incident report.

B. The incident report shall be submitted to the department, or its designee, with the specified requirements and within specified time lines.

C. Specific requirements and timelines are outlined in each program office's *Critical Incident Reporting Policy and Procedures* document.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1979 (October 2017).

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Rebekah E. Gee MD, MPH
Secretary

1710#063

RULE

Department of Health Bureau of Health Services Financing

Hospital Licensing Standards
Obstetrical and Newborn Services
Neonatal Unit Functions
(LAC 48:I.9513)

The Department of Health, Bureau of Health Services Financing has amended LAC 48:I.9513 as authorized by R.S. 36:254 and R.S. 40:2100-2115. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 3. Licensing and Certification

Chapter 93. Hospitals

Subchapter S. Obstetrical and Newborn Services (Optional)

§9513. Neonatal Unit Functions

A. - C.1.b. ...

c. The staffing of this unit shall be based on patient acuity and consistent with the recommended staffing guidelines of the 2012 Seventh Edition of the *AAP Guidelines for Perinatal Care*. For medical sub-specialty requirements, refer to Table 1, Neonatal Medical Subspecialties and Transport Requirements.

* * *

2. - 2.f.i. ...

3. Equipment Requirements

a. This unit shall have the following support equipment, in sufficient number, immediately available as needed in the hospital that includes, but is not limited to:

i. ...

ii. respiratory support that allows provision of continuous mechanical ventilation for infants less than 32 weeks gestation and weighing less than 1,500 grams.

4. - 5.b. ...

D. Level III Surgical NICU

1. - 2.a. ...

* * *

3. Equipment Requirements

a. This unit shall have the following support equipment, in sufficient number, immediately available as needed in the hospital that includes, but is not limited to:

i. a full range of respiratory support that includes high frequency ventilation and inhaled nitric oxide.

E. - E.2.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2100-2115.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:2429 (November 2003), amended LR 33:286 (February 2007), amended by the Department of Health, Bureau of Health Services Financing, LR 43:78 (January 2017), LR 43:1979 (October 2017).

Rebekah E. Gee MD, MPH
Secretary

1710#064

RULE

**Department of Health
Bureau of Health Services Financing
and
Office of Aging and Adult Services
and
Office for Citizens with Developmental Disabilities**

Personal Care Services—Long-Term
Standards for Participation
(LAC 50:XV.12901 and 12909)

The Department of Health, Bureau of Health Services Financing, the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities have amended LAC 50:XV.12901 and §12909 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 9. Personal Care Services

Chapter 129. Long Term Care

§12901. General Provisions

A. - B. ...

C. Each LT-PCS applicant/recipient shall be assessed using a uniform interRAI home care assessment tool or a subsequent assessment tool designated by OAAS. The assessment is designed to verify that an individual meets eligibility qualifications and to determine resource allocation while identifying his/her need for support in performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). The assessment generates a score which measures the recipient's degree of self-performance of late-loss activities of daily living during the period just before the assessment.

1. The late-loss ADLs include eating, toileting, transferring and bed mobility. An individual's assessment will generate a score which is representative of the individual's degree of self-performance on the late-loss ADLs.

D. - F.3.d. ...

G. The Department of Health may remove an LT-PCS provider from the LT-PCS provider freedom of choice list and offer freedom of choice to LT-PCS participants when:

1. - 3. ...

H. The department may offer recipients the freedom to choose another provider if/when the owner(s), operator(s), or member(s) of the governing body of the provider agency is/are under investigation related to:

1. bribery or extortion;
2. tax evasion or tax fraud;
3. money laundering;
4. securities or exchange fraud;
5. wire or mail fraud;
6. violence against a person;
7. act(s) against the aged, juveniles or infirmed; or
8. any crime involving public funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:911 (June 2003), amended LR 30:2831 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 32:2082 (November 2006), LR 34:2577 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2450 (November 2009), LR 39:2506 (September 2013), LR 41:540 (March 2015), LR 42:902 (June 2016), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1980 (October 2017).

§12909. Standards for Participation

A. In order to participate as a personal care services provider in the Medicaid Program, an agency:

1. - 1.d. ...

2. must possess a current, valid home and community-based services license to provide personal care attendant services issued by the Department of Health, Health Standards Section.

B. - D.2. ...

E. Electronic Visit Verification. An electronic visit verification (EVV) system must be used for automated scheduling, time and attendance tracking and billing for LT-PCS services.

1. LT-PCS providers identified by the department shall use:

- a. the EVV system designated by the department; or
- b. an alternate system that:
 - i. has successfully passed the data integration process to connect to the designated EVV system; and
 - ii. is approved by the department.

2. Reimbursement for services may be withheld or denied if a provider:

- a. fails to use the EVV system; or
- b. uses the system not in compliance with Medicaid's policies and procedures for EVV.

3. Requirements for proper use of the EVV system are outlined in the respective program's Medicaid provider manual. All LT-PCS providers shall comply with the respective program's Medicaid provider manual.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 29:912 (June 2003), amended LR 30:2832 (December 2004), amended by the Department of Health and Hospitals, Office of Aging and Adult Services, LR 34:2579 (December 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Aging and Adult Services, LR 35:2451 (November 2009), LR 39:2508 (September 2013), amended by the Department of Health, Bureau of Health Services Financing and the Office of Aging and Adult Services and the Office for Citizens with Developmental Disabilities, LR 43:1980 (October 2017).

Rebekah E. Gee MD, MPH
Secretary

1710#065

RULE

Department of Health Licensed Professional Counselors Board of Examiners

Academic Requirements and
Definitions for PLMFTs and LMFTs
(LAC 46:LX.3105, 3107, 3309, 3311, 3315, and 3317)

In accordance with the applicable provisions of the Louisiana Administrative Procedure Act (R.S. 49:950 et seq.) and through the authority of the Mental Health Counselor Licensing Act (R.S. 37:1101 et seq.), the Louisiana Licensed Professional Counselors Board of Examiners has adopted rules and to amended existing rules to clarify practice definitions for provisional licensed marriage and family therapists (PLMFTs) and licensed marriage and family therapists (LMFTs), to clarify academic standards for PLMFTs and LMFTs, and to implement new academic requirements as set forth in Act 736 of the 2014 Regular Legislative Session.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part LX. Licensed Professional Counselors Board of Examiners

Subpart 2. Professional Standards for Licensed Marriage and Family Therapists and Provisional Licensed Marriage and Family Therapists

Chapter 31. License of Title for Marriage and Family Therapy

§3105. Definitions for Licensed Marriage and Family Therapists and Provisional Licensed Marriage and Family Therapists

* * *

Marriage and Family Therapy—the professional application of psychotherapeutic and family systems theories and techniques in the prevention, diagnosis, assessment, and treatment of mental, emotional, and behavioral disorders in an individual and relational disorders in couples and families.

Practice of Marriage and Family Therapy—the rendering of professional marriage and family therapy and psychotherapy services, limited to prevention, assessment, diagnosis, and treatment of mental, emotional, behavioral, relational, and addiction disorders to individuals, couples, and families, singularly or in groups, whether such services

are offered directly to the general public or through either public or private organizations for a fee, monetary or otherwise in accordance with professional training as prescribed by R.S. 37:1116 and the code of ethics/behavior involving the application of principles, methods, or procedures of the marriage and family therapy profession.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:154 (February 2003), amended LR 29:2784 (December 2003), LR 41:741 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1981 (October 2017).

§3107. Serious Mental Illness

A. Introduction. Act 736 of the 2014 Regular Session of the Louisiana Legislature amended the Louisiana Marriage and Family Therapists Practice Act as follows.

1. A licensee may not assess, diagnose, or provide treatment to any individual suffering from a serious mental illness when medication may be indicated, unless the licensee consults and collaborates with a practitioner who is licensed or holds a permit with the Louisiana state Board of Medical Examiners or an advanced practice registered nurse licensed by the Louisiana state Board of Nursing who is certified as a psychiatric nurse practitioner.

2. Applicability. The requirement for collaboration and consultation set forth above shall apply only if any of the following conditions are assessed, diagnosed, or treated by the licensee:

- a. schizophrenia or schizoaffective disorder;
- b. bipolar disorder;
- c. panic disorder;
- d. obsessive-compulsive disorder;
- e. major depressive disorder, moderate to severe;
- f. anorexia/bulimia;
- g. intermittent explosive disorder;
- h. autism;
- i. psychosis NOS (not otherwise specified) when diagnosed in a child under 17 years of age;
- j. Rett's disorder;
- k. Tourette's disorder;
- l. dementia.

B. Definitions

1. As used herein:

practitioner—an individual who is licensed or holds a permit with the state Board of Medical Examiners or an advanced practice registered nurse licensed by the Louisiana state Board of Nursing who is certified as a psychiatric nurse practitioner.

2. As used herein:

medication is indicated—when the client has been diagnosed with a serious mental illness and:

- i. when the client or legal guardian discloses the prescribed use of psychiatric medication;
- ii. when the licensee, client, or legal guardian believes that the use of prescribed psychiatric medication may facilitate treatment goals and improve client functioning.

3. As used herein:

consultation and collaboration—may be specific or general in nature.

i. Specific Consultation and Collaboration. When medication is indicated for clients who have been diagnosed with a serious mental illness and if the client assents to consultation, the licensee must attempt to consult with the client's practitioner within a reasonable time after receiving the consent for the purpose of communicating the diagnosis and plan of care.

(a). If the licensee's attempts to consult directly with the practitioner are not successful, the licensee must notify the practitioner with a reasonable time that he or she is providing services to the client. Also, the licensee must document in the client's file the date of client consent, the date of consultation, or, if attempts to consult did not succeed, the date and manner of notification to the practitioner. The licensee will inform the client of the inability to consult directly with the practitioner and will discuss and document additional options with the client, including that of general consultation and collaboration. The licensee will provide information to the practitioner regarding client progress as conditions warrant. Consultation and collaboration, for purpose of these rules and otherwise, shall not be construed as supervision. Further, consultation and collaboration does not include the transfer between the consulting professionals of responsibility for the client's care or the ongoing management of the client's presenting problem(s).

(b). If attempts to consult directly with a practitioner for a specific consultation are successful, the licensee must document in the client's file the information obtained in the specific consultation. The licensee will provide information to the practitioner regarding client progress as conditions warrant.

ii. General Consultation and Collaboration. When medication is indicated for clients who have been diagnosed with a serious mental illness and when the client does not assent to a specific consultation, the licensee must attempt to consult with a practitioner within a reasonable time for a general consultation without releasing any identifying information about the client.

(a). If the licensee's attempts to consult directly with a practitioner are not successful, the licensee must document in the client's file the date of client refusal for consent to consult, the date of general consultation, or if attempts to consult did not succeed, the date and manner of notification to a practitioner.

(b). If attempts to consult directly with a practitioner for a general consultation are successful, the licensee must document in the client's file the information obtained in the general consultation. The licensee will provide general information to the practitioner regarding client progress as conditions warrant.

iii. Consultation and collaboration, for purposes of these rules and otherwise, shall not be construed as supervision. Further, consultation and collaboration does not include the transfer between the consulting professionals of responsibility for the client's care or the ongoing management of the client's presenting problem(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1981 (October 2017).

Chapter 33. Requirements for Licensure and Provisional Licensure

§3309. Academic Requirements for MFT Licensure or Provisional Licensure [Formerly §3311]

A. The board, upon recommendation of the advisory committee, shall provisionally license a person for postgraduate clinical experience who applies on the required application forms, completed as the board prescribes and accompanied by the required fee. Additionally, applicants must meet one of the four following academic options:

1. ...

2. a master's or doctoral degree in marriage and family therapy or marriage and family counseling or a related clinical mental health field from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs (CACREP) in a regionally-accredited educational institution with a minimum of six courses in marriage and family therapy, including coursework on the AAMFT code of ethics. The degree must include:

a. - b.

3. a master's or doctoral degree in marriage and family therapy or a related clinical mental health field from a regionally accredited institution of higher education or a certificate from a postgraduate training institute in marriage and family therapy. Applicants with a school counseling degree would need to meet the requirements in §3311. The qualifying degree or certificate program must include coursework, practicum, and internship in marriage and family therapy that is determined by the advisory committee to be substantially equivalent to a graduate degree or postgraduate certificate in marriage and family therapy from a program accredited by COAMFTE. To be considered substantially equivalent, qualifying degrees or post graduate certificates must include:

a. - c. ...

4. a master's degree or a doctoral degree in marriage and family therapy from a regionally accredited institution of higher education whose program and curriculum was approved by the board through the advisory committee at any time prior to July 1, 2010. The master's or doctoral degree for this option must include:

a. a minimum of 60 semester hours of coursework;

b. a minimum of 500 supervised direct client contact hours, with a minimum of 250 hours of these 500 hours with couples and/or families;

c. a minimum of 100 hours of face-to-face supervision. The training of the supervisor must be substantially equivalent to that of an AAMFT approved supervisor as determined by the advisory committee.

B. Pursuant to Act 736 of the 2014 Regular Legislative Session and effective January 1, 2018, all applicants whose academic background has not been previously approved by the board as of January 1, 2018, must have completed a minimum of six credit hours in diagnostic psychopathology. Courses in this area shall provide academic instruction from a systemic/relational perspective in psychopharmacology, physical health and illness, traditional psycho-diagnostic categories including the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) as published by

the American Psychiatric Association on May 18, 2013 and/or the *International Statistical Classification of Diseases and Related Health Problems*, Tenth Edition, published in 1992 (ICD-10) as published by World Health Organization, and the assessment and treatment planning for the treatment of mental, intellectual, emotional, or behavioral disorders within the context of marriage and family systems.

C. Required coursework in marriage and family therapy for academic options 1, 2, 3 and 4 may be completed during the qualifying master's or doctoral degree programs or may be taken as post-graduate work at a regionally-accredited college, university, or qualifying postgraduate marriage and family therapy training institute as determined by the advisory committee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:156 (February 2003), amended LR 29:2785 (December 2003), LR 35:1113 (June 2009), LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:1965 (August 2012), repromulgated LR 41:741 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1982 (October 2017).

§3311. Coursework and Academic Supervision Requirements, for Options 2, 3, and 4

A. - A.8. ...

9. Up to 220 of the required 500 hours of supervised direct client contact and 44 of the required 100 hours of face-to-face supervision not completed during a practicum and/or internship during the completion of the qualifying degree program or postgraduate training institute may be completed once an applicant is provisionally licensed as a provisional licensed marriage and family therapist and is under the supervision of an LMFT board-approved supervisor. These hours shall be added to the required 1500 hours of supervised direct client contact required for licensure.

B. Specific Coursework Requirements—Option 3

1. - 1.b....

c. Assessment and Treatment in Marriage and Family Therapy—prior to January 1, 2018, a minimum of six credit hours, three in assessment and three in diagnosis are required. As of January 1, 2018, a minimum of nine credit hours are required, three in assessment and six in diagnosis pursuant to Act 736 of the 2014 Regular Legislative Session. Courses in this area shall provide academic instruction from a systemic/relational perspective in psychopharmacology, physical health and illness, traditional psycho diagnostic categories including the use of the *Diagnostic and Statistical Manual of Mental Disorders*, Fifth Edition (DSM-5) as published by the American Psychiatric Association on May 18, 2013 and/or the *International Statistical Classification of Diseases and Related Health Problems*, Tenth Edition, published in 1992 (ICD-10) as published by World Health Organization, and the assessment and treatment planning for the treatment of mental, intellectual, emotional, or behavioral disorders within the context of marriage and family systems. Any additional coursework may be completed as post-graduate work in accordance with §3309.C.

1.d. - 2....

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 37:1602 (June 2011), repromulgated LR 37:2163 (July 2011), amended LR 38:1966 (August 2012), LR 41:742 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1983 (October 2017).

§3315. Application, Practice, and Renewal Requirements for Provisional Licensed Marriage and Family Therapists

A. - A.7. ...

B. Definitions for Supervision

* * *

Qualified Supervision—supervision of the clinical services of a provisional licensed marriage and family therapist by a board-approved supervisor or supervisor candidate for the purpose of qualifying the provisional licensed marriage and family therapist for licensure as an LMFT in Louisiana in accordance with the plan of supervision approved by the advisory committee. Under no circumstances shall any contact that is not face-to-face (such as interaction by conventional correspondence, telephone, e-mail, instant message, etc.) between an LMFT board-approved supervisor or supervisor candidate and a provisional licensed marriage and family therapist be considered qualified supervision unless such contact is pre-approved by the advisory committee as part of the supervisee's plan of supervision. Up to 25 of the 100 face-to-face supervision hours may be conducted via synchronous videoconferencing.

a. - c. ...

* * *

Supervision—the professional relationship between a supervisor and supervisee that nurtures the professional self of the supervisee, promotes the development of the supervisee's therapeutic knowledge and skill, contributes to the supervisee's development of sound ethical judgment, and reasonably ensures that the therapeutic services delivered by the supervisee meet a minimum standard of clinical and ethical quality. The supervisor provides guidance and instruction that is of such quality, frequency, and regularity that the clinical and professional development of the supervisee is promoted and the supervisee's service delivery is adequately monitored. Supervision involves the clinical review of the supervisee's work with clients that may utilize therapist self-report and review of clinical documentation, review of audiotapes or videotapes, or direct observation of live therapy sessions.

* * *

C. PLMFT Supervision Requirements for Licensure

1. A PLMFT must complete qualified postgraduate clinical experience under the supervision of a board-approved supervisor or registered supervisor candidate that consists of work experience in marriage and family therapy and that includes at least 3,000 hours of clinical services to individuals, couples, families, or groups. An out-of-state applicant may transfer up to 2100 hours of supervised experience towards licensure (a maximum of 1200 direct client contact hours, a maximum of 815 indirect hours, and a

maximum of 85 hours of face-to-face supervision). The aforementioned hours must have been accrued under the clinical supervision of an approved supervisor within their state who meets the qualifications of a supervisor of PLMFTs set forth by the advisory committee. The decision to approve transfer of hours and supervisors from out of state shall be made at the discretion of the advisory committee.

a. At least 1500 hours must qualify as direct work experience. Up to 500 hours of direct work experience received during the completion of a graduate program that is systemically oriented as determined by the advisory committee may be counted toward the required 2000 hours.

b. The remaining 1,000 hours may be indirect work experience or other professional activities that may include but are not limited to qualified supervision, workshops, public relations, administrative tasks, consulting with referral sources, etc. as approved by the advisory committee.

c. - d. ...

2. The postgraduate clinical experience must include at least 200 hours of qualified supervision, of which at least 100 hours must be individual supervision. The remaining 100 hours may be group supervision.

a. Up to 100 hours of face-to-face supervisor contact received during the completion of the applicant's qualifying academic experience graduate program that is systemically oriented as determined by the advisory committee may be counted toward the required 200 hours of qualified supervision. Of these 100 hours, only 50 hours may be counted as individual supervision. Up to 25 of the 100 face-to-face supervision hours may be conducted via synchronous videoconferencing.

3. - 7.e. ...

D. Renewal Requirements for Provisional Licensed Marriage and Family Therapists

1. - 1.e. ...

2. The board chair, upon recommendation of the advisory committee, shall issue a document renewing the provisional license for a term of two years. The provisional license of any licensee who fails to have his/her provisional license renewed every two years during the month of October shall lapse. An individual with a lapsed license may not practice mental health counseling, identify his/herself as a provisional licensed marriage and family therapist or accrue any supervised experience hours. A lapsed provisional license may be renewed within a period of 90 days or postmarked by January 31 upon payment of all fees and arrears and presentation of all required documentation. After 90 days, the licensee will forfeit all supervised experience hours accrued during that renewal period and must reapply for provisional licensure under current requirements and submit recent continuing education hours (CEHs) as part of reapplication. Out of state PLMFT applicants will need to complete any additional psychopathology coursework as required pursuant to §3309.B.

D.3. - F.4 ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 29:158 (February 2003), amended LR 29:2787 (December 2003), LR 35:1114 (June 2009), LR 38:1966 (August

2012), LR 39:1806 (July 2013), LR 41:742 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1983 (October 2017).

§3317. Qualifications of the LMFT-Approved Supervisor, LMFT-Registered Supervisor Candidate, Board-Approved Supervisor, and Registered Supervisor Candidate

A. - D.3. ...

E. Renewal of Certification as a Board-Approved Supervisor

1. The board-approved supervisor shall renew his or her board certification to supervise PLMFTs every four years. Supervisors will receive a renewal announcement from the board providing them with their required renewal date and will receive a renewal notice every four years thereafter.

2. To qualify for renewal, board-approved supervisors must:

a. maintain an active LMFT license in good standing as defined by this Rule. Applicants for renewal of their board-approved supervisory status that are under a consent order as a licensee may be renewed only at the discretion of the advisory committee;

b. complete six clock hours of continuing education in clinical MFT supervision prior to each renewal date for current renewal period. These continuing education hours may also count toward the board-approved supervisor's renewal requirements and toward the LMFT licensure renewal requirements;

i. - ii. ...

c. successfully complete the board-approved orientation/renewal workshop for supervisors. The orientation may count as either the orientation workshop or a renewal workshop toward the required six hours of required continuing education for board-approved supervisors;

2.d. - 3.f. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1101-1123.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Licensed Professional Counselors Board of Examiners, LR 38:1969 (August 2012), amended LR 41:746 (April 2015), amended by the Department of Health, Licensed Professional Counselors Board of Examiners, LR 43:1984 (October 2017).

Mary Alice Olsan
Executive Director

1710#008

RULE

**Department of Insurance
Office of the Commissioner**

Rule 3—Advertisements of Accident and Sickness Insurance (LAC 37:XI.Chapter 13)

The Department of Insurance, pursuant to the authority of the Louisiana Insurance Code, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended Rule Number 3—Advertisements of Accident and Sickness Insurance. The purpose of amending this rule is to remove the requirement

under LAC 37:XI.Chapter 31, Rule Number 3 that insurers file a certificate of compliance in regards to advertisements.

Title 37

Insurance

Part XI. Rules

Chapter 13. Rule Number 3—Advertisements of Accident and Sickness Insurance

§1301. Purpose

A. The purpose of these rules is to assure truthful and adequate disclosure of all material and relevant information in the advertising of accident and sickness insurance. This purpose is intended to be accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of accident and sickness insurance in a manner which prevents unfair competition among insurers and is conducive to the accurate presentation and description to the insurance buying public of a policy of such insurance offered through various advertising media. This rule is being amended to remove the requirement that insurers file a certificate of compliance in regards to advertisements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, November 1, 1973, amended by the Department of Insurance, Office of the Commissioner, LR 43:1985 (October 2017).

§1333. Enforcement Procedures

A. ...

B. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, November 1, 1973, amended by the Department of Insurance, Office of the Commissioner, LR 43:1985 (October 2017).

§1337. Effective Date

A. This rule shall become effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, November 1, 1973, amended by the Department of Insurance, Office of the Commissioner, LR 43:1985 (October 2017).

James J. Donelon
Commissioner

1710#009

RULE

Department of Insurance Office of the Commissioner

Rule 3A—Advertisement of Medicare Supplement Insurance (LAC 37:XI.Chapter 1)

The Department of Insurance, pursuant to the authority of the *Louisiana Insurance Code*, R.S. 22:1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., has amended Rule Number 3A—Advertisement of Medicare Supplement Insurance. The purpose of amending this Rule is to remove the requirement

under LAC 37:XI.Chapter 1, Rule Number 3A, that insurers file a certificate of compliance in regards to advertisements.

Title 37

INSURANCE

Part XI. Rules

Chapter 1. Rule Number 3A—Advertisement of Medicare Supplement Insurance

§101. Purpose

A. - D. ...

E. The purpose of this rule is to provide prospective purchasers with clear and unambiguous statements in the advertisements of Medicare supplement insurance; to assure the clear and truthful disclosure of the benefits, limitations and exclusions of policies sold as Medicare supplement insurance. This purpose is intended to be accomplished by the establishment of guidelines and permissible and impermissible standards of conduct in the advertising of Medicare supplement insurance in a manner which prevents unfair, deceptive, and misleading advertising and is conducive to accurate presentation and description to the insurance-buying public through the advertising media and material used by the insurance agents and companies. This rule is being amended to remove the requirement that insurers file a certificate of compliance in regards to advertisements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991), amended by the Department of Insurance, Office of the Commissioner, LR 43:1985 (October 2017).

§131. Enforcement Procedures

A. - A.1. ...

B. - B.1. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991), amended by the Department of Insurance, Office of the Commissioner, LR 43:1985 (October 2017).

§135. Effective Date

A. This rule shall be effective upon final publication.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:2 and 22:224.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Commissioner of Insurance, LR 17:67 (January 1991), amended by the Department of Insurance, Office of the Commissioner, LR 43:1985 (October 2017).

James J. Donelon
Commissioner

1710#011

RULE

Department of State Business Services Division

Military Personnel Powers of Attorney (LAC 19:V.101)

Pursuant to the provisions of the Administrative Procedure Act (R.S. 49:950 et seq.) and under the authority of R.S. 9:3865 and R.S. 36:742, the Department of State has repealed LAC 19:V.101 which required the department to

adopt a uniform statutory power of attorney form for military personnel. During the 1995 Regular Legislative Session, Act 1131 repealed the provisions of R.S. 9:3865 and amended R.S. 9:3862 to provide an illustrative and suggestive power of attorney form to be used by military personnel or other eligible persons who reside or own immovable property in the state.

Title 19

CORPORATION AND BUSINESS

Part V. Secretary of State

Chapter 1. Domestic Corporations

§101. Uniform Statutory Form Power of Attorney for Military Personnel

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 19:3865 and R.S. 36:742.

HISTORICAL NOTE: Promulgated by the Department of State, Office of the Secretary of State, LR 17:1227 (December 1991), repealed by the Department of State, Business Services Division, LR 43:1986 (October 2017).

Tom Schedler
Secretary of State

1710#028

RULE

Department of Transportation and Development Offshore Terminal Authority

Licensing Offshore Terminal Facilities for
Dry Bulk Cargoes (LAC 70:VII.Chapter 1)

The Department of Transportation and Development, Offshore Terminal Authority has amended LAC 70:VII.105, 107 and 111 in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the power delegated under the laws of the state of Louisiana. The amendments:

1. add the definition of operations manual;
2. require an applicant to state that there will be no substantial change from the plans, operational systems, methods, procedures and safeguards set forth in the applicant's operations manual; and
3. permit perpetual licensure of licensees in order to conform the state licensure program to the federal licensure program.

Title 70

TRANSPORTATION

Part VII. Offshore Terminal Authority

Chapter 1. Licensing Offshore Terminal Facilities for Dry Bulk Cargoes

§105. Definitions

A. As used in these rules:

* * *

Operations Manual—the licensee's operations manual approved by the United States Coast Guard, as the same may be amended from time to time.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 9:424 (June 1983), amended by the Department of Transportation and Development, Offshore Terminal Authority, LR 43:1986 (October 2017).

§107. Applications

A. - B.4. ...

5. An application shall contain a statement by the applicant that:

a. there will be no substantial changes from the plans, operational system, and methods, procedures and safeguards set forth in the operations manual; and

5.b. - 7.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 9:424 (June 1983), amended by the Department of Transportation and Development, Offshore Terminal Authority, LR 43:1986 (October 2017).

§111. Licenses

A. - C.1.b. ...

D. Term of License. Except as otherwise provided in these rules and regulations, a license shall be in effect unless suspended or revoked by the authority or surrendered by the licensee, or for a term of years as prescribed by the authority.

E. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:3101 et seq.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways, LR 9:425 (June 1983), amended by the Department of Transportation and Development, Offshore Terminal Authority, LR 43:1986 (October 2017).

Robert R. Adley
Executive Director

1710#017

RULE

Department of the Treasury Board of Trustees of the Louisiana State Employees' Retirement System

Purchase of Service Credit for Military Service
(LAC 58:I.701, 703, 905, 907, 913 and 915)

The Department of the Treasury, Board of Trustees of the Louisiana State Employees' Retirement System ("LASERS") has amended in part and repealed some of the provisions contained in Chapters 7 and 9 of Part I of LAC Title 58. Amendments reflect the federal maximum purchase of five years of military service credit allowed, to reflect the federal time period allowed to pay for military service credit, removal of provisions which are in conflict with federal and state law, the amendment of the Chapter titles better reflect the purpose of each, the removal of references to payment of interest and changes to utilize the term "member" uniform throughout both Chapters.

Title 58
RETIREMENT

Part I. Louisiana State Employees' Retirement System
Chapter 7. Purchase of Military Service under
R.S. 11:153

§701. Purchase of Military Service

A. A maximum of four years of credit for military service may be purchased by members who rendered military service in accordance with R.S. 11:153, provided the member received a discharge other than dishonorable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:153.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended LR 26:1490 (July 2000), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

§703. Requirements for Application to Purchase
Military Service

A. - B. ...

C. - D. Repealed.

E. The payment of the cost shall be credited to the member's account. If the member later separates from state employment and requests a refund of contributions, the amount paid shall be refunded along with other employee contributions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 11:515 and R.S. 11:153.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 32:265 (February 2006), LR 43:1987 (October 2017).

Chapter 9. Purchase of Retirement Credit under
R.S. 29:411 et seq., and the Uniformed
Services Employment and Reemployment
Rights Act

§905. Limitations

A. Members may receive no more than a total of five years of military service credit in the retirement system for military service rendered in accordance with R.S. 29:411 et seq., and the Uniformed Services Employment and Reemployment Rights Act (USERRA).

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:411 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

§907. Credit for Eligibility or Benefit Purposes

A. In accordance with provisions of USERRA, a member shall receive credit for purposes of determining eligibility for retirement at no cost to the individual or agency. In order to receive credit for purposes of calculating the retirement benefit, contributions shall be paid to the retirement system in accordance with section 414(u) of the *Internal Revenue*

Code. If the employee was on paid leave during the period of active military service, the employee has received retirement credit for that service and no additional information need be furnished to the retirement system.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:411 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

§913. Payment of Contributions after Military Service
is Completed

A. The employer shall pay the employer contribution.

B. ...

C. The employer shall determine the amount of earnings that would have been earned and compute the employee and employer's contributions that are due.

D. The employee shall pay the employee contributions to the agency. The agency shall remit the employee and employer contributions to LASERS within 30 days after the employee has paid his or her portion. The agency shall provide a monthly breakdown of the earnings and contributions for each member and the certification documents to LASERS.

E. Payment for military service shall be made in accordance with section 414(u) of the *Internal Revenue Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:414 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

§915. Death and Survivor Benefits

A. - B. ...

C. If a member dies before completing payment for military service under this Chapter, a beneficiary or survivor has the right to pay the required contributions as set forth in R.S. 29:415, except that the applicable time limit within which payment must be made is that set forth in section 414(u) of the *Internal Revenue Code*. If the beneficiary or survivor chooses not to pay the member's contribution, the computation of death and survivor benefits shall be based on the actual service credit of the member, excluding his or her military service.

AUTHORITY NOTE: Promulgated in accordance with R.S. 29:414, R.S. 29:415 and R.S. 11:515.

HISTORICAL NOTE: Promulgated by the Department of Treasury, Board of Trustees of the State Employees' Retirement System, LR 22:373 (May 1996), amended by the Department of Treasury, Board of Trustees of the Louisiana State Employees' Retirement System, LR 43:1987 (October 2017).

Cindy Rougeou
Executive Director

1710#034

Notices of Intent

NOTICE OF INTENT

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Horticulture and Quarantine Program
Citrus Greening and Citrus Canker Disease Quarantine
(LAC 7:XV.127)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority of the state entomologist in R.S. 3:1652, notice is hereby given that Department of Agriculture and Forestry ("department") intends to adopt the Rule set forth below, establishing a quarantine for citrus greening disease ("CG") and citrus canker disease ("CC") caused by the bacterial pathogens *Xanthomonas axonopodis* pv. *citri* and *Xanthomonas axonopodis* pv. *aurantifolii*. The state entomologist has determined that CG and CC has been found in this state and may be prevented, controlled, or eradicated by quarantine. CG renders the fruit unmarketable and ultimately causes death of infested plants. CC causes premature leaf and fruit drop, twig dieback and tree decline in citrus trees and is spread by wind-driven rain or through the movement of infected plants. Failure to prevent, control, or eradicate these diseases threatens to destroy Louisiana's commercial citrus industry and the growing and harvesting of citrus by citizens of Louisiana for their own private use.

Louisiana's commercial citrus industry adds \$7,500,000-\$10,000,000 to the state's agriculture economy each year. Sales of citrus trees and plants by nursery stock dealers to private individuals also are important to the state's economy. The loss of the state's commercial citrus industry and privately owned citrus trees and fruit would be devastating to the state's economy and to its private citizens. The quarantine and labeling requirements established by this regulation are necessary to prevent the spread of CG and CC in Louisiana outside of the current areas where these diseases have already been found.

For these reasons, the outbreak CG and CC in Louisiana presents an imminent peril to the health, safety and welfare of Louisiana's citizens and the state's commercial and private citrus industry. As a result of this imminent peril, the Department of Agriculture and Forestry hereby exercises its full and plenary power pursuant to R.S. 3:1652 to deal with crop and fruit pests and contagious and infectious crop and fruit diseases by imposing the quarantines set out in these proposed regulations.

Title 7

AGRICULTURE AND ANIMALS

Part XV. Plant Protection and Quarantine

Chapter 1. Crop Pests and Diseases

Subchapter B. Nursery Stock Quarantines

§127. Citrus Nursery Stock, Scions and Budwood

A.- C.6. ...

D. Citrus Greening

1. The department issues the following quarantine because the state entomologist has determined that citrus greening disease (CG), also known as Huanglongbing disease of citrus, caused by the bacterial pathogen *Candidatus Liberibacter* spp., has been found in this state and may be prevented, controlled, or eradicated by quarantine.

2. Quarantined Areas. The quarantined areas in this state are the parishes of Orleans, Washington, Jefferson, and any other areas found to be infested with CG. The declaration of any other specific parishes or areas shall be published in the official journal of the state and in the *Louisiana Register*.

3. Regulated Materials. The following materials are hosts of CG and their movement is prohibited from CG-quarantined areas due to the presence of CG:

a. all plants and plant parts, including but not limited to nursery stock, cuttings, budwood, and propagative seed (but excluding fruit), of: *Aegle marmelos*, *Aeglopsis chevalieri*, *Afraegle gabonensis*, *Afraegle paniculata*, *Amyris madrensis*, *Atalantia* spp. (including *Atalantia monophylla*), *Balsamocitrus dawei*, *Bergera* (=Murraya) *koenigii*, *Calodendrum capense*, *Choisya ternata*, *Choisya arizonica*, *X Citroncirus webberi*, *Citropsis articulata*, *Citropsis gillettiana*, *Citrus madurensis* (= *X Citrofortunella microcarpa*), *Citrus* spp., *Clausena anisum-olens*, *Clausena excavata*, *Clausena indica*, *Clausena lansium*, *Eremocitrus glauca*, *Eremocitrus hybrid*, *Esenbeckia berlandieri*, *Fortunella* spp., *Limonia acidissima*, *Merrillia caloxylon*, *Microcitrus australasica*, *Microcitrus australis*, *Microcitrus papuana*, *X Microcitronella* spp., *Murraya* spp., *Naringi crenulata*, *Pamburus missionis*, *Poncirus trifoliata*, *Severinia buxifolia*, *Swinglea glutinosa*, *Tetradium ruticarpum*, *Toddalia asiatica*, *Triphasia trifolia*, *Vepris* (= *Toddalia*) *lanceolata*, and *Zanthoxylum fagara*;

b. any other products, materials, articles, or means of conveyance, if an inspector determines that it presents a risk of spreading CG, and after the inspector provides written notification to the person in possession of the products, materials, articles, or means of conveyance that it is subject to the restrictions of the regulations.

E. - E.3.d.iii.(b). ...

F. Citrus Canker Disease Quarantine

1. The department issues the following quarantine because the state entomologist has determined that citrus canker disease (CC), caused by the bacterial pathogen *Xanthomonas axonopodis* pv. *citri* (*Xac* A, A* and AW) with synonyms *X. citri* pv. *citri*, or *X. citri* subsp. *citri* or *X. campestris* pv. *citri* or *X. smithii* subsp. *citri*; and *X. axonopodis* pv. *aurantifolii* (*Xac* B and C) with a synonym *X. fuscans* subsp. *aurantifolii*, has been found in this state and may be prevented, controlled, or eradicated by quarantine.

2. No regulated materials as defined in this Subsection shall be moved out of any area of this state that is listed in this subsection as a quarantined area for CC, except as provided in this Subsection.

3. Any person violating this quarantine shall be subject to imposition of the remedies and penalties provided for in R.S. 3:1653 for any violation of this quarantine.

4. Quarantined areas in this state include:

a. the entire parishes of Orleans, St. Bernard, Plaquemines, Jefferson, Lafourche, St. Charles, St. James and St. John;

b. A declaration of quarantine for CC covering any other specific parishes or areas of this state shall be published in the official journal of the state and in the *Louisiana Register*.

5. - 6.i.iv. ...

G. Labeling Requirements for Citrus Related Quarantines

1. Any citrus nursery stock sold, moved, or distributed within an area quarantined for citrus greening, or citrus canker shall have attached to the article or to the container of the article, a permanent and weatherproof tag or label in a clear and legible format no less than 14 point font bearing the exact words: PROHIBITED FROM MOVEMENT OUTSIDE OF THE CITRUS QUARANTINE AREAS, PENALTY FOR VIOLATION, Louisiana Department of Agriculture and Forestry. For a current list of quarantine areas, please go to www.ldaf.state.la.us.

2. Citrus nursery stock that is not in or intended for movement within a citrus greening or citrus canker quarantined area shall not be required to be labeled as described in Paragraph 1 of this Subsection.

3. Citrus nursery stock labeled or tagged according to Paragraph 1 of this Subsection that is offered for retail sale in an area that is not quarantined for citrus greening or citrus canker may be subject to stop order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3:1652.

HISTORICAL NOTE: Promulgated by the Department of Agriculture, Office of Agricultural and Environmental Sciences, LR 11:319 (April 1985), amended by the Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, LR 40:1308 (July 2014), LR 42:730 (May 2016), LR 44:

Family Impact Statement

The proposed Rule does not have any known or foreseeable impact on family formation, stability, and autonomy. In particular, the proposed Rule has no known or foreseeable impact on:

1. the stability of the family;
2. the authority and rights of persons regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budget;
5. the behavior and personal responsibility of children;
6. the ability of the family or a local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed Rule does not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The proposed Rule will have no adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule does not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments, data, opinions and arguments regarding the proposed Rule. Written submissions must be directed to Ansel Rankins, Director of the Horticulture Commission, Department of Agriculture and Forestry, 5825 Florida Blvd., Suite 3002, Baton Rouge, LA 70806 and must be received no later than 12 p.m. on December 5, 2017. No preamble is available.

Mike Strain, DVM
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Horticulture and Quarantine Program Citrus Greening and Citrus Canker Disease Quarantine

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will not result in additional savings or expenditures for state or local governmental units. The proposed rule changes add Jefferson Parish to the list of parishes quarantined for Citrus Greening disease (CG). Therefore, citrus nursery stock cannot be shipped outside of Jefferson Parish unless it is going to another parish also under the CG quarantine. The proposed rule changes also add St. James and St. John to the list of parishes under quarantine for Citrus Canker disease (CC). Furthermore, the amendments remove a list of coordinates under quarantine in Jefferson, St. Charles, and Lafourche Parishes and places the entirety of each of the three parishes under quarantine for CC. Therefore, citrus nursery stock from any of the parishes under the CC quarantine cannot be shipped outside of the CC quarantine area unless grown in an USDA-APHIS approved structure.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes will affect citrus nursery stock producers. The proposed rule changes will require citrus nursery stock producers selling, moving, or distributing citrus nursery stock within a CC or CG quarantined area to be tagged

with a label warning the consumer about the movement restrictions under the quarantine. The citrus nursery stock producer will be responsible for providing the label/tag and assuming any associated costs. A survey of citrus nursery stock producers showed the average price per tag is \$0.05. Limiting the spread of CC and CG will protect Louisiana's citrus industry, which currently has a farm value of \$2.4 - \$5 million in southeastern Louisiana in the form of citrus nursery stock, and \$5.1 million in the form of commercial citrus fruit in the state.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition and employment.

Dane Morgan
Assistant Commissioner
1710#071

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Children and Family Services
Child Welfare Division**

Physician Notification (LAC 67:V.1135)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:953(A), the Department of Children and Family Services (DCFS), Child Welfare, proposes to adopt LAC 67:V.1135, Physician Notification.

Pursuant to R.S. 40:1086.11, this Rule will implement the physician notification to the Department of Children and

Family Services of a newborn exhibiting symptoms of withdrawal or other observable and harmful effects in his physical appearance or functioning, that the physician believes is due to the use of a controlled dangerous substance in a lawfully prescribed manner by the mother during pregnancy.

This action was made effective by an Emergency Rule effective October 1, 2017.

Title 67

SOCIAL SERVICES

Part V. Child Welfare

Subpart 3. Child Protective Services

Chapter 11. Administration and Authority

§1135. Physician Notification

A. The Department of Children and Family Services establishes procedures for implementation of the physician notification, as required by R.S. 40:1086.11.

1. A physician identifying a newborn exhibiting symptoms of withdrawal or other observable and harmful effects in his physical appearance or functioning due to the use of a controlled dangerous substance, as defined by R.S. 40:961 et seq., in a lawfully prescribed manner by the mother during pregnancy shall use the DCFS form, physician notification of substance exposed newborns; no prenatal neglect suspected, to comply with the requirements of the Comprehensive Addiction and Recovery Act. The following form, which may be obtained from the DCFS website at www.dcfs.la.gov/, shall be used to notify DCFS.

Physician Notification of Substance Exposed Newborns

No Prenatal Neglect Suspected

LA DCFS: This notification does not constitute a report of child abuse and or neglect and shall be faxed to Centralized Intake at (225) 342-7768. If a newborn is exhibiting withdrawal symptoms that are believed to be the result of unlawful use of a controlled dangerous substance; or, if you suspect abuse and or neglect including suspicion of prenatal neglect, you must contact the CPS Hotline at 1-855-4LA-KIDS to make a report.

Newborn's Information	
Last Name: _____ First Name: _____	
Date of Birth: ____ / ____ / ____ Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	
Race: <input type="checkbox"/> White <input type="checkbox"/> African American <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Hispanic/Latino <input type="checkbox"/> Other	
Substances Newborn was exposed to, if known: _____	
Was there a Neonatal Abstinence Syndrome screening completed? <input type="checkbox"/> Yes <input type="checkbox"/> No	
What are the results of the screening and/or withdrawal symptoms observed: _____	

Mother's Information	
Last Name: _____ First Name: _____	
Date of Birth: ____ / ____ / ____	
Race: <input type="checkbox"/> White <input type="checkbox"/> African American <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Hispanic/Latino <input type="checkbox"/> Other	
Marital Status: <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Other <input type="checkbox"/> Unknown	
Address upon discharge: _____ City: _____ State: _____ Zip Code: _____	
Parish: _____ Phone Number: _____	

Provider Information	
Name of Hospital: _____	Notification Date: ____/____/____
Address: _____	City: _____ State: _____ Zip Code: _____
Parish: _____	Phone Number: _____
Physician's Name: _____	
Other Medical Staff who provided input for this notification: _____	
Plan of Care	
Mother reports receiving prenatal care: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Mother reports that the newborn has safe housing arrangements, including safe sleep for the newborn: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Mother reports she has the following newborn supplies: <input type="checkbox"/> Car Seat <input type="checkbox"/> Crib <input type="checkbox"/> Diapers <input type="checkbox"/> Formula/Nutrition <input type="checkbox"/> Other supplies (Specify) _____	
Referral(s) Initiated: <input type="checkbox"/> Medical Care for Newborn <input type="checkbox"/> Medical Care for Mother <input type="checkbox"/> Early Steps <input type="checkbox"/> LACHIP <input type="checkbox"/> WIC <input type="checkbox"/> Substance Abuse Services/Treatment <input type="checkbox"/> Pediatric Specialist <input type="checkbox"/> Counseling <input type="checkbox"/> Housing Other information: _____	
Educational materials provided: <input type="checkbox"/> Car Safety Seats <input type="checkbox"/> Shaken Baby Syndrome <input type="checkbox"/> Safe Sleep <input type="checkbox"/> Early Steps <input type="checkbox"/> Substance Abuse Treatment <input type="checkbox"/> Other Educational materials provided: (Specify) _____	
Was additional discharge care instructions provided specifically addressing the newborn's exposure and/or withdrawal symptoms to prescribed medications: <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, describe</i> _____	

2. The physician will complete the form with the following required information:

- identifying information about the newborn;
- substance to which the newborn was exposed;
- identifying information about the mother;
- identification of the physician who is providing the notification; and
- plan of care for newborn and mother including a listing of educational materials provided, referrals made, additional discharge instructions, and information gained from the mother regarding care of the newborn.

3. The notifying physician shall transmit the form via fax to DCFS at (225) 342-7768.

B. DCFS shall monitor plans of care via the regional child welfare teams with multidisciplinary professionals to address the availability and delivery of the appropriate services for the newborn, affected caregiver and family.

C. DCFS shall maintain information on plans of care for the sole purpose of non-identifying data reporting as required by 42 USC 5106a(d). Information will be maintained for 24 months from the date of the notification to DCFS.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1086.11, Physician Notification.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Child Welfare Division, LR 44:

Family Impact Statement

The proposed Rule is not anticipated to have an impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as defined by R.S. 49:973.

Small Business Analysis

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

All interested persons may submit written comments through November 28, 2017 to Rhenda Hodnett, Assistant Secretary of Child Welfare, Department of Children and Family Services, P. O. Box 3118, Baton Rouge, LA 70821.

Public Hearing

A public hearing on the proposed Rule will be held on November 28, 2017 at the DCFS, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA beginning at 9 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS appeals unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Marketa Garner Walters
Secretary

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Physician Notification

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

Other than the publication fees associated with the proposed rule changes, it is not anticipated that the Louisiana Department of Children and Family Services (DCFS) will incur any other costs or savings as a result of this rule. The proposed rule codifies Act 359 of the 2017 Regular Legislative Session, which requires a physician to notify DCFS of a newborn exhibiting symptoms of harmful effects that the physician believes is due to the use of a controlled dangerous substance that was prescribed to the mother during pregnancy.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

The proposed rule change will not affect state or local governmental revenue collections.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

The implementation of this rule is anticipated to have a nominal cost to physicians associated with faxing a notification to DCFS if a newborn exhibits harmful effects due to the mother being prescribed a controlled dangerous substance during pregnancy.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

The proposed rule change does not affect competition and/or employment.

Rhenda Hodnett
Assistant Secretary
1710#040

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Children and Family Services
Economic Stability Section**

**Family Violence Prevention and Intervention Program
(LAC 67:III.Chapter 69)**

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to adopt LAC 67:III, Subpart 19, Family Violence Prevention and Intervention Program, Chapter 69, Family Violence Prevention and Intervention Program, Subchapter A, Sections 6901, 6903, 6905, 6907, 6909, 6911, and 6913, and Subchapter B, Sections 6915, 6917, 6919, 6921, 6923, 6925, 6927, 6929, 6931, 6933, 6935, 6937, 6939, 6941, 6943, 6945, 6947, 6949, 6951, and 6953.

Pursuant to Louisiana's Temporary Assistance for Needy Families (TANF) Block Grant, adoption of Chapter 69 is necessary to govern the development of community-based shelters and support services for victims of family violence, domestic violence, and dating violence. Sections 6901, 6903, 6905, 6907, 6909, 6911, and 6913 are being adopted to govern the administration of the program and eligibility of program providers. Sections 6915, 6917, 6919, 6921, 6923, 6925, 6927, 6929, 6931, 6933, 6935, 6937, 6939, 6941, 6943, 6945, 6947, 6949, 6951, and 6953 are being adopted

to provide standards to program providers in developing quality services and implementation of best practices.

Title 67

SOCIAL SERVICES

Part III. Economic Stability

**Subpart 19. Family Violence Prevention and
Intervention Program**

**Chapter 69. Family Violence Prevention and
Intervention Program**

Subchapter A. Program Administration and Eligibility

§6901. Program Creation

A. From federal funds, state funds, and/or funds made available from private or local sources for this purpose, the Department of Children and Family Services (DCFS) is hereby authorized to establish a family violence program, hereafter called the "Family Violence Prevention and Intervention Program." This program is for the development of community based shelters and support services for victims of family violence, domestic violence, and dating violence. The Family Violence Prevention and Intervention Program is partially funded through the Temporary Assistance for Needy Families (TANF) block grant. The program meets TANF goal 4 to encourage the formation and maintenance of two-parent families. DCFS will be responsible for the administration of available funding to selected program providers.

B. DCFS will administer the program to do the following:

1. establish immediate and full-time trauma informed shelters for victims of family violence, domestic violence, and dating violence and their dependents; and
2. increase, improve, and coordinate the delivery of comprehensive support services to victims of family violence, domestic violence, and dating violence.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6903. Eligible Organizations

A. In order to receive funding, a program provider's core function must be providing assistance to victims of family violence, domestic violence, and dating violence. The program provider must be a public or private nonprofit organization and demonstrate that it can provide services that include but are not limited to the following:

1. a 24-hour a day shelter which provides safe refuge and temporary lodging for victims of family violence, domestic violence, and dating violence and their dependents or other safe refuge accommodations such as time limited hotel and motel placements and other direct placement programs;
2. counseling for victims;
3. support programs that assist victims of family violence, domestic violence, and dating violence in obtaining needed medical, legal, and other services and information; and
4. educational programs tailored to increase community awareness of family violence, domestic violence, and dating violence.

B. The program provider must meet minimum health, safety, and program standards as defined in standards 4.1 and 4.2 (see §6921).

C. The program provider must demonstrate that they have received, or can expect to receive, separate local funding equal to 20 percent of their anticipated cost of operation. In-kind contributions, whether it be materials, commodities, transportation, office space, other types of facilities, personal services, or otherwise, will be evaluated by the department and, if appropriate, will be included as part of the required local 20 percent funding.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6905. Contracts for Services

A. DCFS will contract for services with eligible providers in accordance with the Louisiana Procurement Code, R.S. 39:1551-1736.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6907. Application Process

A. Application packets will be sent to all existing family violence program providers and all persons and organizations that have made past inquiries regarding funding. Organizations interested in applying may request application packets from the Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70821.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6909. Definitions

Counseling—supportive services that are provided to individuals or groups and includes referrals to community-based social services.

Crisis Counseling—in-person crisis intervention, emotional support, guidance, and counseling provided by advocates, counselors, mental health professionals, or peers. Such counseling may occur at the scene of a crime, immediately after a crime, or provided on an ongoing basis.

Dating Violence—violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

Domestic Violence—a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion, that adults or adolescents use against their intimate partners where the perpetrator and victim are current or have been previously dating, cohabiting, married, or divorced. This includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is

protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Family Violence—any act or threatened act of violence, including any forceful detention of an individual that results or threatens to result in physical injury and is committed by a person against another individual to or with whom such person is related by blood or is or was related by marriage or is or was otherwise legally related or is or was lawfully residing.

Personally Identifying Information or Personal Information—any individually identifying information for or about an individual, including information likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected, including:

1. a first and last name;
2. a home or other physical address;
3. contact information (including a postal, e-mail or Internet protocol address, or telephone or facsimile number);
4. a Social Security number, driver's license number, passport number, or student identification number; and
5. any other information (including date of birth, racial or ethnic background, or religious affiliation, that would serve to identify any individual).

Shelter—the provision of temporary refuge and supportive services in compliance with applicable state law governing the provision, on a regular basis, of shelter, safe homes, meals, clothing, personal care items and supportive services to victims of family violence, domestic violence, or dating violence, and their dependents.

Support Programs—preventive and counseling services such as outreach, parenting, employment training, educational services, promotion of good nutrition, disease prevention, substance abuse counseling, legal advocacy, transportation, and adult and child counseling.

Supportive Services—services that meet the needs of victims of family violence, domestic violence and dating violence and their dependents for short term, transitional, or long term safety and provides counseling, advocacy, and assistance for victims.

Survivor—someone who has experienced any form of intimate partner violence, has overcome the domestic violence, or who has escaped an abusive relationship.

Trauma Informed Care—is an organizational structure and treatment framework that involves understanding, recognizing, and responding to the effects of all types of trauma. Trauma informed care also emphasizes physical, psychological, and emotional safety for both survivors and providers, and helps survivors rebuild a sense of control and empowerment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6911. Program Monitoring

A. Program providers that contract with the Department of Children and Family Services (DCFS) and receive funding for domestic violence programs must allow and agree that:

1. DCFS personnel will make annual on-site programmatic contract reviews. DCFS, at its discretion, may make more than one programmatic visit per year. These site visits will be conducted for compliance with contractual requirements; and

2. The program grants to the Office of the Legislative Auditor, the Office of the Inspector General, the Bureau of Audit and Compliance Services, the federal government, and any other officially designated authorized representatives of DCFS the right to audit, inspect, and review all books and records pertaining to services rendered under their contract with DCFS and the right to conduct on-site monitoring.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6913. Guiding Principles for Minimum Program Standards

A. All of the minimum program standards are considered mandatory. Any program provider found noncompliant with a critical standard must submit a corrective action plan to address the noncompliant standard to the department within 15 calendar days after the date of the program inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

Subchapter B. Minimum Program Standards

§6915. Governance

A. Guiding Principles. The board of directors is the governing body of a nonprofit organization. The board establishes the program's mission statement and develops policies necessary to carry out the mission. The board secures financial support and is legally responsible and accountable for the organization and the programs that the organization administers. The roles of the board and the executive director are clearly differentiated. The executive director, a program staff member, does not govern and the board does not interfere with, participate in, or administer the day-to-day program activities.

B. Critical Minimum Standards

1. Standard 1.1. The mission and philosophy of the program must be compatible with the philosophy of the department as stated in §6902.B.1-2.

2. Standard 1.2. The program must have documentation of its authority to operate under state law.

3. Standard 1.3. The program must have a designated board of directors.

C. Minimum Standards

1. Standard 1.4. The program must have documents that identify the board of directors' names, addresses, and the dates of their membership on the board.

2. Standard 1.5. The board must consist of individuals who do not have a conflict of interest with program staff members or other board members.

3. Standard 1.6. The board must have a written conflict of interest policy. This policy will prohibit anyone in the provider organization from undertaking any activities that have a conflicting interest or have the appearance of a conflicting interest in the mission and operations of the organization.

4. Standard 1.7. The board must maintain written minutes of formal meetings. Written policies must dictate the frequency of meetings and the quorum requirements for formal meetings.

5. Standard 1.8. The board must ensure that the program complies with its policies and with relevant federal, state, and local laws and regulations.

6. Standard 1.9. The board must designate a person to act as executive director and is to delegate sufficient authority to the executive director to manage the program, its program staff members, and volunteers.

7. Standard 1.10. The board must conduct an annual performance evaluation of the executive director.

8. Standard 1.11. The executive director will administer day-to-day activities in accordance with these standards and guidelines. The executive director is responsible for directing the program staff members to implement activities to fulfill the program's mission and purpose.

9. Standard 1.12. The board and the executive director must develop a strategic plan for the program.

10. Standard 1.13. The board must inform the department within 48 hours of any changes in their executive director position.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6917. DCFS Contract Requirements

A. Guiding Principles. The Department of Children and Family Services (DCFS) requires that all family violence programs meet basic legal and contractual obligations and specify these obligations in the contract. These standards are not inclusive of all the requirements under the contract. The contract will contain a mandatory provision for compliance with DCFS quality assurance standards (see R.S. 46:2122, program creation; R.S. 46:2124, community shelters, funding, services; R.S. 46:2126, programs for victims of family violence, creation; and R.S. 46:2128, eligibility requirements for local family violence programs).

B. Critical Minimum Standards

1. Standard 2.1. The legal structure of the program must permit it to enter into a contract with the state and to abide by federal statutes and regulations. The program must agree to abide by the requirements of the following as applicable to employees, volunteers, and survivors: title VI and VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972; Federal Executive Order 11246; the Federal Rehabilitation Act of 1973, as amended; the Vietnam Era Veteran's Readjustment Assistance Act of 1974; title VIII of the Civil Rights Act of 1968; title IX of the Education Amendments of 1972; the Age Act of 1972; and the Americans with Disabilities Act of 1990. These regulations require that the program act as an equal opportunity employer. The program must not discriminate against anyone seeking employment on the basis of age, sex, race, color, disability, national origin, religion, veteran status, marital status, sexual orientation, abuse status (i.e. battered or formerly battered), or parenthood. Program employees must not discriminate in the provision of services

or use of volunteers on the basis of any status described above. No program can discriminate or retaliate against any employee who exercises their rights under any federal or state anti-discrimination law.

2. Standard 2.2. The program must maintain current commercial liability insurance coverage on all program owned vehicles. Staff members and volunteers who transport survivors and their families in their personal vehicles must also maintain appropriate liability insurance coverage.

C. Minimum Standards

1. Standard 2.3. The program must acknowledge DCFS as a funding agent on its program stationary and written material and when providing information about the program.

2. Standard 2.4. The program must inform designated representatives of DCFS prior to initiating any substantial changes to the services that the program provides or to any of the program's physical structures.

3. Standard 2.5. The program must be registered with the Secretary of State and show compliance with that agency's annual reporting requirements.

4. Standard 2.6. The program must not use DCFS funds as direct payment to survivors or dependents.

5. Standard 2.7. The program must not impose income eligibility standards on individuals seeking assistance.

6. Standard 2.8. The program must not accept reimbursement from survivors of domestic violence. All advertising must state that services to survivors and their children are free and confidential.

7. Standard 2.9. Services provided to survivors must include, but are not limited to, emergency shelter or referrals, 24-hour hotline, supportive services, and crisis, peer, educational, and domestic violence counseling.

8. Standard 2.10. The program must secure and maintain insurance that covers both general and professional liability.

9. Standard 2.11. The program must submit accurate and timely reports and budget revisions as required by its contract with DCFS.

10. Standard 2.12. The program must retain all books, records, and other documents relevant to its contract with DCFS and funds expended thereunder for at least four years after its receipt of final payment or for three calendar years after audit issues or litigation have been resolved.

11. Standard 2.13. The service provider must obtain an annual audit of its program within 6 months of ending its fiscal year and submit a copy of the audit to DCFS within 30 calendar days of the audit issuance.

12. Standard 2.14. The program must have a written policy that prohibits it from entering into any agreement involving the payment of public funds to:

a. any member of the governing body or staff member and any members of their immediate family, anyone living in the household as a family member, or to any entity in which the foregoing have any direct or indirect financial interest; or

b. in which any of the foregoing serve as an officer or employee unless the services or goods are provided at a competitive cost or under terms favorable to the program. The program must maintain written records of any and all

financial transactions in which a member of the board, staff members, or their immediate family is involved.

13. Standard 2.15. The program must identify the area and population it serves in its brochures.

14. Standard 2.16. The program must maintain accurate statistical data relevant to its services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6919. Confidentiality

A. Guiding Principles. The board of directors, staff members, and volunteers of the family violence program must maintain the highest ethical standards in all areas of the organization's performance and in program implementation. Confidentiality must be guaranteed. The program must implement methods for determining the extent of danger to survivors and develop proper ways to prepare for the future safety of domestic violence survivors (see R.S. 46:2124.1, privileged communications and records; a provision in the federal Family Violence Prevention and Services Act 42 U.S.C 1042(a)(2)E; Section 40002, of the Violence Against Women and Department of Justice Reauthorization Act of 2005, PL 1009-162, subparagraph (b)(2), non-disclosure of confidential or private information and section 40002(a)(18), personally identifying information or personal information).

B. Critical Minimum Standards

1. Standard 3.1. The program must have policies and procedures that maintain compliance with the confidentiality requirements of the Family Violence Prevention and Services Act (FVPSA) and the Violence Against Women Act of 2005 (VAWA). These include the following specific provisions that require those programs receiving grant funds to:

a. protect the confidentiality and privacy of adults, youth, and child victims of domestic violence, dating violence, sexual assault, or stalking and their families. No individual client information can be revealed without the informed, written, and reasonably time-limited consent of the person about whom information is sought; and

b. have policies and procedures specific to maintaining the confidentiality of information that can be released to the parent or guardian of a non-emancipated minor, to the guardian of a person with disabilities, or pursuant to statutory or court mandate. Federal law provides that consent for release may not be given by the abuser of the minor, the abuser of the other parent of the minor, or the abuser of a person with disabilities.

C. Minimum Standards

1. Standard 3.2. The program must inform individuals served by the program about the nature and scope of confidentiality prior to providing any services.

2. Standard 3.3. The program must have additional policies and procedures that maintain compliance with confidentiality provisions that prohibit the disclosure of personal identifying victim information to any third-party shared data system including the homeless management information system (HMIS).

3. Standard 3.4. The program must ensure that members of the board, staff members, and volunteers sign a written statement agreeing to maintain the confidentiality of

all information and records pertaining to those receiving or seeking services through the program.

4. Standard 3.5. When the program finds it necessary to keep the location of its shelter or other facilities confidential, program employees and volunteers are prohibited from disclosing information regarding the location of those facilities except in the following specific cases:

a. to medical, fire, and police personnel when their presence is necessary to preserve the health and safety of survivors, employees, and volunteers at the facility;

b. to vendors and others that programs have business relationships. The executive director or their designee must ensure that written agreements are executed by representatives of such businesses pledging to keep the location of the facility confidential;

c. to any other person, when necessary, to maintain the safety and health standards in the facility. The executive director or their designee may disclose the location of the confidential facility for the purpose of official inspections. These inspections include personnel from the Department of Children and Family Services (DCFS), the Louisiana Coalition Against Domestic Violence (LCADV), state and local fire marshals, and the Louisiana Department of Health (LDH). The executive director may also allow other inspections and maintenance activities necessary to ensure safe operation of the facility;

d. to supportive individuals of a shelter resident who have been approved, at the request of the resident, as a part of case management, who have been prescreened by shelter staff members, and who have signed an agreement to keep the location of the facility confidential. Program staff members must ensure that the individual's presence at the facility does not violate the confidentiality of other shelter residents; and

e. the program must ensure that an individual that is receiving services sign a written statement agreeing to maintain the confidentiality of facility locations and the identities of others who are also provided services by the program.

5. Standard 3.6. When the program finds it unnecessary to keep the location of its shelter or other facilities confidential, the program must notify survivors, in writing, that the program's facilities are not confidential locations.

6. Standard 3.7. The program must have policies and procedures to ensure that records of services sought or provided to individuals will be held confidential.

7. Standard 3.8. The program must maintain all records which contain personally identifying information in a secure, locked storage area. The program must have policies and safeguards in place to prevent unauthorized access to information identifying individuals seeking or receiving services. This includes all information systems and computer accessible records and documents.

8. Standard 3.9. The program must have policies that allow review and access to records only by program staff members and volunteers as necessary to provide or supervise services, perform grant or audit reporting duties, or to respond to court orders. Programs may identify in their confidentiality policies which specific staff members, as

identified by job responsibility and title, will have access to confidential information, records, and information systems.

9. Standard 3.10. The program must ensure that policies and procedures require that staff members' and volunteers' discussions and communications regarding services provided to individuals will occur in appropriate and private locations.

10. Standard 3.11. The program must have policies that ensure that all consent for release of information forms are signed by the person about whom information is to be released. These forms must specifically state:

a. the purpose of the release of information;

b. the specific information that a person receiving services agrees can be released;

c. the person or entity to whom the information is to be released;

d. the date on which the form was signed;

e. clear time limits for the duration of the release of information; and

f. language that clearly indicates that the consent for release of information may be revoked at any time.

11. Standard 3.12. Staff members and volunteers must report suspected abuse of a child or dependent adult. A program must develop policies that address the specific procedures by which program staff members and volunteers will report information about any suspected abuse or neglect of a child or dependent adult according to the Louisiana child and adult protection statutes. (Refer to Louisiana's *Children Code* article, 603 Definitions, subparagraph 13, "mandatory reporter" language; article 609 regarding mandatory and permitted reporting; and article 610 regarding the reporting procedure to be utilized; article 611 regarding immunity from civil and criminal liability; article 612 which describes the assignment of reports regarding child abuse and neglect for investigation and assessment; and article 615 regarding the disposition of reports in response to allegations of child abuse or neglect. (See also R.S. 14:403.2 regarding the abuse and neglect of dependent or disabled adults.)

12. Standard 3.13. After the filing of a program initiated abuse report, program staff members must cooperate with child welfare and adult protective services regarding the investigation of the abuse report. This includes assisting child welfare and adult protective service investigators in gaining access to survivors and their children in a manner that maintains the confidentiality of survivors that are receiving services who are not involved in the abuse report. This does not necessitate that staff members release any information that is not relevant to the reported abuse.

13. Standard 3.14. The program must have policies for reporting personally identifying information that may be required in instances of medical emergencies.

14. Standard 3.15. The program must have policies for reporting personally identifying information that is required in instances of threats of suicide or homicide that is communicated to domestic violence staff members and volunteers. Under these circumstances, confidential information may be disclosed to:

a. licensed medical or mental health personnel and facilities;

- b. law enforcement personnel;
- c. an intended victim; and
- d. the parent of a minor child making a threat.

15. Standard 3.16. The program must have policies that include how domestic violence program staff members, volunteers, and the board will respond to summonses, subpoenas, and warrants, and should, whenever possible, provide specific detail allowing for a service of these court orders at a location other than that of the domestic violence program site.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6921. Facility Management

A. Guiding Principles. These standards encompass the overall practices and procedures that the program employs to ensure that the facility and grounds that the program leases or owns are appropriately accessible, functional, attractive, safe, and secure for the persons served, visitors, employees, and volunteers. They ensure that the program meets legal requirements and codes for public safety and health.

B. Critical Minimum Standards

1. Standard 4.1. The program must adhere to all applicable zoning, building, fire, health, and safety codes and the laws of the state and of the community in which the organization is located. Programs are annually inspected by the Office of Public Health and the State Fire Marshal.

2. Standard 4.2. Traditional, multifamily, and single family shelters must have monitored security, which may be an electronic security system, security cameras, security guards, or on-site police or sheriff protection.

C. Minimum Standards

1. Standard 4.3. The program must conduct regular evaluations to ensure proper maintenance of the facility's buildings and grounds.

2. Standard 4.4. The program must have a written policy to ensure that serious incidents, such as those that require the services of a licensed medical professional or law enforcement agency, are properly documented and reconciled. Serious incidents must be reported to appropriate authorities.

3. Standard 4.5. The program must have a policy that it will only house the number of people in its residential facilities that can be adequately served and that the number served cannot surpass the building capacity that is set by the state fire marshal.

4. Standard 4.6. The program must have space to provide private and confidential services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6923. Financial Management and Fund Development

A. Guiding Principles. The board, the executive director, and other specified staff members share the responsibility for fiscal management. The board has the final legal responsibility for financial matters and should set policies, oversee the raising of revenue, approve annual budgets, and monitor finances throughout the year. The board should authorize the executive director to plan and implement procedures that carry out the fiscal policies while ensuring

internal control so that no single individual directs all of the organization's day-to-day financial activities. Staff members that are assigned financial responsibilities are to make regular reports to the board.

B. Critical Minimum Standards

1. Standard 5.1. The program must comply with all financial regulations, such as earnings withholding and payment of federal, state, and Social Security taxes and the management and use of restricted funds.

2. Standard 5.2. The program must complete and submit the annual IRS Form 990 in a timely, accurate manner and include specific information about the relevant year's activities and outcomes.

3. Standard 5.3. The program's board of directors must ensure that its financial statements are audited, certified, and prepared in accordance with sound accounting practices. The audit must be completed within six months of the close of the organization's fiscal year.

C. Minimum Standards

1. Standard 5.4. Consistent, timely, and accurate financial reports must be prepared on a quarterly basis by the individuals responsible for the organization's financial reporting. These reports should consist of a balance sheet and profit/loss statement and be approved by the board during official board meetings.

2. Standard 5.5. The program must ensure separation of financial duties to serve as a checks and balances system to prevent theft, fraud, and inaccurate reporting. This system should be appropriate to the size of the organization's financial and human resources.

3. Standard 5.6. The board must adopt written financial procedures to monitor major expenses including payroll, travel, investments, expense accounts, contracts, consultants, and leases.

4. Standard 5.7. The program must periodically assess their risks and purchase appropriate levels of insurance to prudently manage their liabilities.

5. Standard 5.8. The board must set the compensation level for the organization's executive director. Minimum wage standards and labor laws related to overtime pay must be followed.

6. Standard 5.9. The executive director and appropriate board members must jointly create a budget that is then presented to the full board for approval. The board should be provided with quarterly budget updates.

7. Standard 5.10. The board must have members that clearly understand how to read and interpret financial statements.

8. Standard 5.11. The board must strictly prohibit financial loans to board members, the executive director, and all organization personnel.

9. Standard 5.12. The program must provide bonding of staff or adequate insurance for employees responsible for financial resources.

10. Standard 5.13. Generally accepted accounting procedures and practices must be implemented as required by the terms of the Department of Children and Family Services (DCFS) contract.

11. Standard 5.14. The program must follow the directives for nonprofit organizations found in the Federal Office of Management and Budget (OMB) Super Circular 2 CFR 200.

12. Standard 5.15. The program must comply with all federal, state, and local laws concerning fundraising practices.

13. Standard 5.16. The program must conduct their fundraising activities in a manner that upholds the public's trust in stewardship of contributed funds. Fundraising communications should include clear, accurate, and honest information about the organization, its activities, and the intended use of funds.

14. Standard 5.17. The board shall have overall responsibility for raising sufficient funds to meet budgeted objectives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6925. Staff Management

A. Guiding Principles. These standards encourage strong professional values. Relevant goals, objectives, and plans must be established for staff and volunteer administration.

B. Critical Minimum Standards

1. Standard 6.1. The program must have written personnel policies that comply with employment law and prohibit discrimination based on race, ethnicity, color, gender, sex, age, sexual orientation, disability, including substance abuse, economic or educational status, religion, HIV/AIDS or health status, and national origin.

2. Standard 6.2. Employees, program staff members, volunteers, and other personnel responsible for the actions of one or more persons and who have been given or have applied to be considered for a position of supervisory or disciplinary authority over children, with the permission of said person, must have a criminal history record check through the Bureau of Criminal Identification and Information before starting employment (see R.S. 15:587.1, provision of information to protect children and R.S. 15:587.3, volunteers and employees in youth-serving organizations; background information).

C. Minimum Standards

1. Standard 6.3. The program must have job descriptions for all positions. Job descriptions must include the required qualifications for each position and the program shall only employ individuals that meet or exceed the required qualifications.

2. Standard 6.4. The program must have written policies and procedures regarding the recruitment, screening, hiring, and dismissal of employees and identify which personnel will be responsible for hiring and terminating employees.

3. Standard 6.5. The program must conduct annual performance evaluations for all employees.

4. Standard 6.6. The program must maintain a confidential file for each staff member that includes, but is not limited to, application, resume, criminal background check, licenses and certifications, if applicable, reference checks, and a signed confidentiality statement.

5. Standard 6.7. The program may use unpaid volunteers to augment the program's direct and indirect services that are provided by paid staff members.

6. Standard 6.8. The program must have written volunteer policies and procedures regarding the recruitment, screening, training, recognition, supervision, and dismissal of volunteers used to provide direct and indirect services.

Such policies must clarify the roles and responsibilities of volunteers in the program's provision of service with specific detail addressing professional boundaries, disclosure, and how, when, where, and the frequency with which volunteers will be used.

7. Standard 6.9. The program must have written job descriptions for each type of volunteer position that follows the same format of job descriptions for paid staff members. Job descriptions must be provided to volunteers upon acceptance into the program.

8. Standard 6.10. The program must maintain a confidential file for each volunteer that shall include, but not be limited to, application, criminal background check, licenses and certifications, if applicable, reference checks, a signed confidentiality statement, and a record of all trainings completed by a volunteer working directly with clients.

9. Standard 6.11. A written grievance policy must be provided to employees and volunteers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6927. Training

A. Guiding Principles. These standards encourage strong professional values. Relevant goals, objectives, and plans must be established for staff and volunteer administration.

B. Critical Minimum Standards

1. Standard 7.1. Training shall be required for all individuals associated with the program. This includes board members, program staff members, and volunteers. Prior to working alone with clients, new staff members and volunteers must complete a minimum of 40 hours of training and must thereafter, annually complete a minimum of 30 hours of family violence training. The training curriculum should be compatible with the Louisiana Coalition Against Domestic Violence (LCADV) training manual or include the following topics:

- a. historical perspective on the movement to end violence against women;
- b. introduction to domestic violence;
- c. confidentiality;
- d. introduction to cultural competency;
- e. introduction to survivor centered advocacy;
- f. ethics in advocacy;
- g. the impact of domestic violence on children;
- h. civil legal and criminal procedure;
- i. advocacy skills;
- j. skills development; and
- k. trauma informed care.

C. Minimum Standards

1. Standard 7.2. The 40-hour training program may be accomplished through a combination of:

- a. group instruction using a variety of training techniques including role playing, other experimental exercises, and audio-visual materials;
- b. one-on-one instruction and discussion with a fully trained, experienced advocate or supervisor;
- c. shadowing a fully trained, experienced advocate performing job duties such as hotline coverage and intake procedures;
- d. a practicum (a practicum is defined as a supervised activity meant to develop or enhance the trainee's ability to provide direct services);

e. audio-visual materials may be used provided the trainee can discuss the information with a fully trained, experienced advocate or facilitator following the activity; and

f. a training manual that is given to each participant from which reading assignments can be made provided the trainee can discuss the information with a fully trained, experienced advocate or facilitator following the activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6929. Eligibility

A. Guiding Principles. These standards seek to ensure the availability and equal provision of services to family violence survivors and their dependents. These standards also define circumstances and situations that could render a survivor ineligible for program services.

B. Critical Minimum Standards

1. Standard 8.1. The program must provide services regardless of race, religion, color, national origin, gender, age, mental or physical disability, sexual orientation, citizenship, immigration status, marital status, or language spoken. The program must assist and accommodate persons with mental or physical special needs. Assistance shall be provided through coordinated efforts between family violence program staff members and other identified service providers.

C. Minimum Standards

1. Standard 8.2. Persons that are eligible for services shall include family violence, domestic violence, and dating violence survivors and their dependents. Eligible persons include adults, legally emancipated minors, minors granted permission for services by a parent, a guardian, a judge's orders, or caretakers of eligible persons. In the event that a non-emancipated minor seeks services, the program must acquire parental permission prior to providing any services. No dependent males or females that are with their parent or guardian shall be denied access to services.

a. Those eligible for services include survivors who may be in imminent danger of being abused by their current or former intimate partner or family member, those who are in danger of being emotionally, physically, or sexually abused, and survivors who have no safe place to go.

b. The program must provide comparable services to eligible male survivors.

2. Standard 8.3. Upon initial contact with survivors, program staff members must complete an assessment which will cover the following:

- a. eligibility for support and intervention services;
- b. immediate safety issues;
- c. batterer's potential for lethality;
- d. ensure that the person requesting services is the survivor and not the perpetrator;
- e. special needs based on a disability;
- f. special needs based on the requirements of a person's self-identified religious, cultural, ethnic, geographic, and other affiliations; and
- g. other appropriate services.

3. Standard 8.4. The program must develop and provide a written grievance policy that must be given to every survivor upon admission to services. The policy shall include procedures to follow in the event a survivor:

- a. believes they have been unjustly denied services;
- b. is dissatisfied with the quality of services; or
- c. is dissatisfied with the behaviors of a staff member or volunteer.

4. Standard 8.5. Survivors may be denied shelter services or be ineligible for other program services. In these instances, the program must, as soon as possible, inform survivors seeking services of the criteria that may render them ineligible for services. This standard is intended to guard against a survivor discovering she or he is ineligible for services when they have already risked leaving their abuser. Information and referrals are to be made for other appropriate services.

a. When the program cannot admit new survivors to a shelter due to capacity, every effort must be made to secure and facilitate admission to safe alternative accommodations (see §6947, standard 17.21).

b. If it is determined that a person is ineligible for services after admission to a shelter, program staff must refer the person to other appropriate services and assist the person to access transportation to receive the other appropriate services.

5. Standard 8.6. The extent to which eligibility can affect the long-term or future eligibility for services must be evaluated and documented on a case-by-case basis. Examples of ineligibility criteria include:

a. not an adult or emancipated minor or a minor granted permission; and

b. exhibits signs of suicidal or homicidal behaviors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6931. Safety Planning

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Critical Minimum Standards

1. Standard 9.1. The program must provide a program staff member to be available 24-hours a day to assist survivors of family violence with assessing levels of danger and lethality and to assist them in developing a personal plan for safety.

C. Minimum Standards

1. Standard 9.2. Safety planning must meet the needs of the survivor.

2. Standard 9.3. The program must develop a protocol for safe travel of survivors. Protocols must contain provisions for survivor travel to programs for crisis intervention, shelter, and other support services. Furthermore, the protocols shall reflect the survivor's need for local travel whether provided by themselves, the program, or public and private carriers.

3. Standard 9.4. Safety planning must include a danger and lethality assessment to determine the survivor's immediate level of danger. Trained advocates must complete the assessment and document the assessment in the survivor's case record.

4. Standard 9.5. Safety planning is an on-going process during shelter stays and advocacy participation. Program staff must provide additional safety planning for survivors during periods of increased risk such as when

filing court documents, attending court hearings, exiting the shelter, or any other strategic move by the survivor or abuser.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6933. Hotline

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Critical Minimum Standards

1. Standard 10.1. The program must operate a 24-hour, 7 days a week hotline. The hotline must be answered by a program staff member or volunteer who has had training on crisis intervention and trauma informed approaches to hotline calls.

C. Minimum Standards

1. Standard 10.2. The program must have a minimum of two telephone lines. One of the lines must be the designated hotline. Programs that employ the use of caller identification equipment or telephone services in conflict with the spirit of anonymity must, as a condition of informed consent, inform callers of the use of such equipment.

2. Standard 10.3. Hotlines must be equipped with call blocking to safeguard against caller identification and call back services.

3. Standard 10.4. Hotline services must provide emergency telephone crisis intervention and advocacy. These services include:

- a. crisis intervention;
- b. assessment of caller's needs;
- c. emergency protocols;
- d. lethality and danger assessment;
- e. information and referrals to available community

resources;

- f. safety planning; and
- g. listening to and validating the caller's experience.

4. Standard 10.5. Hotline services must include the provision of education and information about:

- a. the nature and dynamics of domestic violence;
- b. how batterers maintain control and dominance over their victims;
- c. the need to hold batterers accountable for their actions;
- d. the recognition that individuals victimized by domestic violence are responsible for their own decisions and that batterers are responsible for their violent behavior; and
- e. trauma.

5. Standard 10.6. Hotline calls must be documented on an appropriate form that denotes each hotline call, the services offered to the survivor, any referrals made on behalf of the survivor, any information received in calls from professionals or third parties, and a plan of action to be taken.

6. Standard 10.7. Staff members answering hotline calls must ensure that all calls are answered immediately and must ensure accessibility for all callers.

7. Standard 10.8. Hotlines must be answered using the name of the family violence program.

8. Standard 10.9. Staff members and volunteers must answer the hotline in a place that is quiet, free of distractions, and confidential. If possible, the hotline should be in a private office.

9. Standard 10.10. The hotline number must be listed in the local telephone directory, be widely distributed, and be available from local telephone information services.

10. Standard 10.11. When holding or transferring hotline calls the staff member must:

- a. complete an initial assessment as to the immediate danger to the survivor before putting the caller on hold;
- b. check back with callers on hold within two minutes; and
- c. prioritize calls using safety and lethality assessments.

11. Standard 10.12. Survivors of domestic violence who are deaf or hard of hearing must have equal access to the hotline.

12. Standard 10.13. The program must have written procedures on how advocates will respond to a Limited English Proficiency (LEP) individual.

13. Standard 10.14. A hotline shall not be answered by an automated call-routing machine, an answering machine, or an answering service.

14. Standard 10.15. The program must maintain a staffing schedule that provides staff members or volunteers access to a supervisor or their designee as a back-up during hotline coverage.

15. Standard 10.16. If either party is using a cellular telephone, the caller must be made aware that confidentiality cannot be guaranteed. All hotline telephones must have a call waiting feature.

16. Standard 10.17. If call forwarding is used to ensure proper staffing of the hotline, it is the responsibility of the program staff members to ensure safety and confidentiality.

17. Standard 10.18. After hours, on weekends, and on holidays, administrative and outreach telephones must be answered by devices that clearly direct callers to the hotline number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6935. Information, Outreach, and Community

Education

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Minimum Standards

1. Standard 11.1. The program must maintain a current listing of traditional and nontraditional community resources including:

- a. emergency service telephone numbers;
- b. housing alternatives;
- c. medical and health care services including dentistry;
- d. legal services;
- e. alcohol and drug related services;
- f. translation and interpreter services;
- g. child protective and welfare related services;

- h. housing options and resources;
- i. services for those individuals with physical or cognitive disabilities;
- j. lesbian, gay, bisexual, transgender, and questioning (LGBTQ) support services;
- k. counseling services for adults and children;
- l. emergency and other transportation services;
- m. continuing education and job training;
- n. child care services and parenting education;
- o. batterer intervention services;
- p. consumer, credit, and financial services;
- q. adolescent services and programs;
- r. elderly support services;
- s. school based services; and
- t. victim and witness programs.

2. Standard 11.2. The program must take an active role in developing and maintaining on-going relationships with the following community partners:

- a. child protective services;
- b. court personnel;
- c. law enforcement agencies;
- d. the Council on Aging;
- e. local schools; and
- f. Temporary Assistance for Needy Families

(TANF) assistance programs.

3. Standard 11.3. The program must actively endeavor to increase awareness of their services to survivors of domestic violence in their service areas.

4. Standard 11.4. The program must provide outreach activities to the ethnic, cultural, and religious diversity of battered women and other victims of domestic violence in their service area. The program must also provide outreach activities to domestic violence victims in traditionally underserved populations.

5. Standard 11.5. Outreach services must be accessible in all service areas of a program. At a minimum, programs must:

- a. ensure that the hotline number is widely distributed in the outreach areas; and
- b. provide a staff member, when possible, to meet in person and as needed with survivors in outreach areas.
- c. conduct public awareness, education, and training activities in outreach areas.

6. Standard 11.6. The program must provide education and prevention programs and information to the local community. Programs should be actively involved in educating individuals, community organizations, and service providers concerning domestic violence dynamics, the prevalence of domestic violence, and the need for survivor safety.

7. Standard 11.7. The program must provide educational assistance to professionals, community groups, and organizations in the local community about the dynamics and extent of domestic violence and the resources that are available from the program. These groups include:

- a. law enforcement agencies;
- b. health care providers;
- c. clergy;
- d. school professionals;
- e. mental health professionals;
- f. social service providers;
- g. business community leaders;

- h. civic groups;
- i. community groups; and
- j. religious groups.

8. Standard 11.8. The program must have written materials in alternative formats to meet the needs of survivors with visual, hearing, or cognitive disabilities and materials for non-English speaking survivors.

9. Standard 11.9. The program must conduct community education, consultation, and training.

a. Programs should take a leadership role in their local community in identifying systems and organizations that affect the prevention and treatment of domestic, family, and dating violence.

b. Programs are to attempt to change institutional practices that again victimize survivors or that place survivors' safety at risk.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6937. Crisis Intervention

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Minimum Standards

1. Standard 12.1. Crisis intervention services must be provided by a qualified, trained staff member or volunteer using a trauma informed approach.

2. Standard 12.2. Crisis intervention services must be primarily focused on the provision of information, advocacy, safety planning, and empowerment.

3. Standard 12.3. Crisis intervention services must be based upon a problem solving model to provide information and referrals that assist an individual or family in crisis. Crisis intervention services include:

- a. assessing risk and danger;
- b. assessing needs;
- c. identifying major obstacles and barriers;
- d. safety planning;
- e. providing referrals, as requested, to community resources such as shelters, attorneys, and medical providers;
- f. providing information about available legal remedies;
- g. exploring possible options to support safety;
- h. formulating an action plan; and
- i. validating the survivor's feelings.

4. Standard 12.4. Goals for crisis intervention services shall be defined as interactions that:

- a. stabilize emotions;
- b. clarify issues; and
- c. provide support and assistance.

5. Standard 12.5. A program that offers crisis intervention services must provide services to both shelter residents and nonresidents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6939. Individual Service Planning

A. Guiding Principles. These standards require that family violence programs establish common quality

intervention services. Participation in intervention services shall be voluntary.

B. Minimum Standards

1. Standard 13.1. In collaboration with survivors, the program must develop an individualized service plan for the purpose of assessing needs, identifying priorities, setting goals, implementing progress toward goals, and locating resources.

2. Standard 13.2. Individual service planning must be provided by qualified, trained staff members or volunteers who are required to be trained in the practice and dynamics of trauma informed care.

3. Standard 13.3. An advocate providing individual service planning must have access to and be familiar with a complete list of community resources. They should also be expected to establish working relationships with other service providers.

4. Standard 13.4. An advocate must provide individual service planning and should assist the person with identifying the person's own needs, available resources and services, and provide assistance in obtaining those services. Individual planning services shall be survivor driven.

5. Standard 13.5. An advocate providing individual service planning must assume a coordinating role using a voluntary services approach and facilitate the provision of services provided by other organizations and professionals in a coordinated and collaborative manner while complying with federal laws regarding confidentiality.

6. Standard 13.6. An advocate must facilitate service delivery and referrals and encourage ongoing communication with the providers of additional services that includes:

- a. ongoing and long-term safety planning;
- b. medical, nutritional, and health services;
- c. counseling for individuals, children, and family;
- d. law enforcement assistance;
- e. civil legal remedies and services;
- f. public assistance services, including job training and support services;
- g. short-term, transitional, and permanent housing;
- h. child care services and parenting education;
- i. child protection services;
- j. alcohol and drug evaluation and education;
- k. alcohol and substance abuse treatment services;
- l. services for persons with disabilities;
- m. transportation assistance;
- n. education, continuing education, High School Equivalency Test (HiSET), and literacy services;
- o. lesbian, gay, bisexual, and transgendered support services;
- p. interpreter and translation services and immigration assistance;
- q. financial planning and consumer rights information and services; and
- r. other related services as needed.

7. Standard 13.7. Advocacy contacts made on behalf of survivors to individuals or groups outside of the family violence program must not be initiated without the survivor's direct permission. A release of confidential information form must be used to document the survivor's approval.

8. Standard 13.8. Programs must provide individual service planning to shelter residents and nonresidents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6941. Support Groups

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. These standards value an individual response, collaboration, thoughtful evaluation, careful stewardship, and unconditional positive regard through a trauma informed approach. Participation in intervention services shall be voluntary.

B. Critical Minimum Standards

1. Standard 14.1. The program must provide group interactions facilitated by program staff members to address the emotional needs of adult and child users of services. These services include crisis, peer, supportive, educational, and domestic violence counseling.

C. Minimum Standards

1. Standard 14.2. Interactive group sessions must be topic oriented, informational, educational, and survivor directed. Sessions must be facilitated by qualified, trained program staff members and volunteers. Staff members and volunteers facilitating the support group must have at least 40 hours of domestic violence training education and experience in group facilitation and group dynamics for peer-to-peer led groups in trauma informed, culturally, and linguistically appropriate approaches.

2. Standard 14.3. The program must provide at least one weekly support group session for adult participants. As resources allow, the program will provide child care or a children's support group session during the time the adult support group meets.

3. Standard 14.4. The support group facilitator must discuss the requirement of maintaining confidentiality during the support group session. The facilitator must then ensure that all individuals attending the group session sign a written statement agreeing to maintain the confidentiality of others attending the group session.

4. Standard 14.5. A program that provides support group services may provide:

- a. open support groups which accept new members at any time; and
- b. closed support groups which do not add new members for a specified period of time.

5. Standard 14.6. Support group services, which differ from professional group therapy, must provide support that addresses the needs identified by those attending the group session that includes:

- a. safety planning;
- b. active and reflective listening;
- c. problem solving;
- d. building self-esteem;
- e. information about available legal remedies; and
- f. information about available community resources.

6. Standard 14.7. Support group services must provide education and information about:

- a. how batterers maintain control and dominance;

- b. the need to hold batterers accountable for their actions;
- c. the recognition that individuals victimized by domestic violence are responsible for their own decisions and that batterers are responsible for their violent behavior;
- d. the role of society in perpetuating violence against women and the social change necessary to eliminate violence against women, including the elimination of discrimination based on ethnicity, color, gender, age, sexual orientation, disabilities, including substance abuse, economic or educational status, religion, HIV/AIDS or health status, or national origin; and
- e. the traumatic effect of abuse.

7. Standard 14.8. The program must provide support groups to both residential and nonresidential survivors including former residents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6943. Services for Children

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Critical Minimum Standards

1. Standard 15.1. Each program must have a written policy prohibiting the use of corporal punishment on children by either the parent or the provider of care while a family is residing in a shelter. Parents must be provided a copy of the policy.

C. Minimum Standards

1. Standard 15.2. The program must recognize the special needs of survivors' children and provide services specific to them.

2. Standard 15.3. All in-person services for children must be provided at the request of the guardian and with the guardian's permission.

3. Standard 15.4. Family violence programs must provide children services to both residential and nonresidential children.

4. Standard 15.5. The program must provide the following services for children:

- a. child intake and assessment;
- b. safety planning with the parent and child;
- c. individual planning and support contacts;
- d. advocacy with outside systems;
- e. information and referral services;
- f. support groups and/or play groups;
- g. information about domestic violence and trauma

in an age appropriate manner; and

- h. an orientation for children residing in a shelter.

5. Standard 15.6. Children services must be provided by qualified, trained staff members or volunteers that are trained in the following:

- a. the developmental stages of childhood, including physical, social, cognitive, and emotional stages;
- b. developmentally appropriate ways of working with children;
- c. a working knowledge of family violence and its effects on survivors and children;
- d. positive discipline techniques;

- e. nonviolent conflict resolution;
- f. the warning signs of abuse;
- g. appropriate methods for interviewing children who have disclosed abuse;
- h. trauma informed care; and
- i. a working knowledge of the child welfare system.

6. Standard 15.7. Children services must include the use of child support groups.

a. Support groups are a time to allow children to play in a safe, structured environment. The support group is to be based on a developmentally appropriate philosophy. While the support group is planned and facilitated by a child advocate, the children direct their own progress in the group. This empowers the child, offers the child a safe and appropriate place to say "No," and teaches consistency, structure, and nonviolent conflict resolution.

b. The goals of the children's support group are to break the silence about abuse, to learn how to protect oneself, to have a positive experience, and to strengthen self-esteem and self-image.

7. Standard 15.8. Program staff members must make available to the child's parent education, support, and access to resources. Child advocates must be available to meet with each parent at least once a week in individual sessions to provide information and support to ensure that:

- a. information is available and provided to parents about domestic violence and its complex effect on parents and their children; and
- b. provides the child's parent with nonviolent options for disciplining his or her child.

8. Standard 15.9. The program must have in place a way to provide and arrange transportation to attend school for a child in residence.

9. Standard 15.10. Access to child care options must be provided to residential families. Situations in which child care options may be provided include:

- a. during the parent's intake;
- b. during support group sessions;
- c. when the parent may be looking for housing or employment;
- d. when the parent is in counseling;
- e. while the parent is meeting with attorneys and attending court proceedings; and
- f. during all appointments and meetings in which caring for the child could be disruptive or when the child might overhear the parent talking about his or her abuse.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6945. Court Advocacy

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Critical Minimum Standards

1. Standard 16.1. The program must provide court advocacy to assist survivors in receiving self-identified interventions and actions sought from civil and criminal justice systems. The program must also provide information

about legal options so that self-identification of needed interventions can occur.

C. Minimum Standards

1. Standard 16.2. Court advocacy services must ensure that appropriate staff members and volunteers have a working knowledge of current state and federal laws pertaining to domestic violence and how the local justice system responds to domestic violence cases including the local court rules in each parish where services are provided.

2. Standard 16.3. Court and legal advocacy must be provided by qualified, trained staff members and volunteers who:

- a. offer support to survivors seeking relief through the courts;
- b. help survivors understand court actions; and
- c. provide information that enables the survivor to make informed decisions about court actions, decisions, and processes.

3. Standard 16.4. Programs offering court advocacy services must maintain a clear distinction between legal advice and legal information. The program must strictly monitor and prohibit staff members and volunteers from practicing law or providing legal representation if they are not properly certified to engage in such legal practices.

4. Standard 16.5. Court advocacy services must maintain current referral lists for survivors that include:

- a. local criminal and civil justice agencies and contact persons in each parish where services are provided; and
- b. local, state, and national resources for certain legal issues such as immigration, interstate child custody, identity, relocation, etc.

5. Standard 16.6. Court advocacy services must be provided to both shelter residents and nonresidents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6947. Shelter

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Critical Minimum Standards

1. Standard 17.1. The program must provide access, admittance, and residence, including transportation to a temporary shelter, or other accommodations for victims of domestic violence and their male and female children, zero to 18 years of age, 24-hours a day, every day of the year.

2. Standard 17.2. The shelter must not discriminate against survivors by limiting the number of times of re-entry into the shelter or by requiring a time limit between re-entries into the shelter. The program must not maintain a "no readmit" list, however, it is permissible to maintain a "not admit at this time" list if admittance of a survivor is not currently appropriate. This information is to be documented in the survivor's file. Reentry is based on the current needs of a survivor and is not based on past situations.

C. Minimum Standards

1. Standard 17.3. Shelter services may be provided through any of the following types of accessible housing:

- a. a physical shelter facility operated by a program that primarily serves domestic violence survivors; and
- b. other shelter accommodations such as time limited motel or hotel placement and other direct placement programs that provide safe housing that is arranged through a program staff member.

2. Standard 17.4. A program that provides shelter services as defined in Standard 17.3 must ensure that all types of services are accessible and culturally and linguistically appropriate. Domestic violence programs that provide safe shelter at locations separate from and/or in addition to the primary shelter facility must ensure that those accommodations are safe and that survivors have access to program staff, a telephone, the program's hotline telephone number, bathroom facilities, and locking doors.

3. Standard 17.5. A physical shelter facility must provide on-site staff member coverage 24-hours a day, seven days a week.

a. Programs that provide shelter through other shelter accommodations must ensure that survivors living in those accommodations have access to program staff 24 hours a day, 7 days a week.

4. Standard 17.6. Programs must have written procedures regarding their shelter intake process. The program must have procedures relative to serving adult male survivors of domestic violence seeking emergency shelter. Male survivors are to be provided with the same level of services as provided to female survivors. Services may be provided in an alternate setting such as a hotel.

5. Standard 17.7. A shelter must provide a back-up staffing system for use during emergencies. A supervisor or designee must be available via a cellular telephone or in some manner that allows for an immediate response. The program must have written protocols that define criteria and steps for using the back-up system.

6. Standard 17.8. A program providing shelter services as defined in Standard 17.3 must:

- a. have written policies and procedures to ensure the safety and security of residents;
- b. ensure that crisis intervention services are voluntary, accessible, available, and offered 24-hours a day with trained on-site advocates to provide face to face emergency services;
- c. provide, free of charge, emergency food, clothing, and personal hygiene items for residents and their children;
- d. provide a personal locker or cabinet that can be locked by a key or combination in which to place their medications and other items of value;
- e. provide access to some form of public or private transportation to and from the facility, to other service providers, and to court;
- f. not require residents to participate in religious groups or to use religious materials; and
- g. offer accommodations to individuals with disabilities.

7. Standard 17.9. A domestic violence program providing shelter services as defined in Standard 17.3 must ensure that the staff members and volunteers:

- a. are trauma informed or are knowledgeable about trauma and participate in on-going training on how to offer trauma informed support;

- b. have immediate face to face contact with a new resident admitted to a shelter to determine emergency needs and to orient the survivor to the program and its procedures;

- c. initiate a face to face intake process with a new resident's admission to the shelter; and

- d. sign a written agreement with each survivor about services to be provided by the shelter which includes:

- i. services to be provided by the program, its staff members, and volunteers;

- ii. confidentiality rights and agreements including records and accessibility;

- iii. communal living arrangements, resident's rights, and privacy matters; and

- iv. length of stay policies and the criteria that may affect the survivor's stay.

8. Standard 17.10. Programs that provide a physical shelter facility must ensure that staff members and volunteers are trained in the dynamics of communal living including:

- a. conflict resolution;

- b. facilitating group dynamics; and

- c. parent and child dynamics and interactions.

9. Standard 17.11. Shelters must develop guidelines that promote communal living. The purposes of the guidelines are for protection, safety, and health. Guidelines must include the shelter's policies on confidentiality, child abuse reporting, nonviolence, weapons, drugs, alcohol, food areas, smoking areas, medications, childcare, and safety.

10. Standard 17.12. Programs must develop a written policy demonstrating how repetitive substance or alcohol use or the demonstration of behaviors incongruent with community living may affect their continued stay in the shelter.

11. Standard 17.13. Shelter management staff members must hold regular meetings to facilitate communal living.

12. Standard 17.14. Shelters must establish a length of stay policy that is flexible and that balances the needs of survivors and the program's ability to meet those needs. Programs that offer a physical shelter facility must offer shelter for a minimum period of six weeks with optional extensions. Programs that utilize hotels and motels must offer a minimum length of stay of four nights and facilitate a stay in a traditional, multifamily, or single family program for longer periods.

13. Standard 17.15. Survivors must be informed, in writing, of the minimum length of stay policy and of any criteria that may impact or shorten their stay in the facility.

14. Standard 17.16. Lengths of stay extensions are contingent on the survivor's progress toward meeting self-identified goals. Programs must have a process for determining extensions. When a request for an extension is denied, the reasons are to be documented in the survivor's case file and shared with the survivor in sufficient time for the survivor to make alternative arrangements. Participation in a support group may not be used as a criterion for granting length of stay extensions.

15. Standard 17.17. Any type of firearm or weapon shall be prohibited in the facility. Program staff members must include in their assessment for services appropriate questions to identify those survivors who may possess firearms or other weapons and assist them in making arrangements for them to be stored at a different location.

16. Standard 17.18. The program must have clearly defined policies for the involuntary termination of services. Shelter programs must make every effort to work with a survivor in order for the survivor to remain in the shelter, except for situations that compromise the safety of others or of the shelter such as:

- a. the use of violence or threats of violence;

- b. the use of behavior that repeatedly disrupts the ability of other survivors and their children to receive safe and effective services;

- c. possession of illegal substances;

- d. possession of a firearm or any other weapon that may threaten a life accidentally or intentionally;

- e. active suicidal or homicidal behaviors; and

- f. violating the confidentiality of another resident.

17. Standard 17.19. The program demonstrates its efforts to keep survivors eligible for shelter services through the documentation of attempts to assist the survivors and/or their children with problematic or disruptive behaviors.

- a. Demerit and warning systems are not to be used; and

- b. The program must respect the survivor's right to privacy in their person, property, communications, papers, and effects. Survivors are not to be subjected to unwarranted or unreasonable searches by shelter staff of their person, room, or property. However, circumstances may arise where some form of search may be necessary to protect the health and safety of shelter residents and staff. Survivors must be informed during intake of the circumstances under which such searches may occur.

18. Standard 17.20. Each residential survivor is to be assigned an advocate. This staff person must be available to meet with the survivor three times a week for the purpose of individual service planning and counseling. Survivors must be notified, in writing; that they will have at least one hour per day, three days a week, of available individual sessions.

- a. If the survivor's assigned advocate is not available, the program must ensure that an alternate staff advocate is available to meet with the survivor.

19. Standard 17.21. Shelter staff members must assist survivors requesting emergency safe shelter in obtaining other temporary shelter if the primary shelter facility is at capacity. The required minimum assistance to be offered by staff members of the domestic violence shelter in this situation is the provision of information and referrals to obtain alternative safe shelter and notice of the right to call back for additional assistance. Staff members and volunteers may make contact with another shelter or service and provide this resource to the survivor.

20. Standard 17.22. When an alternative safe shelter is located, it is the responsibility of the domestic violence program to provide transportation to the alternative shelter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6949. Other Shelter Accommodations

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Minimum Standards

1. Standard 18.1. Alternatives to a shelter facility may include hotel and motel placement as a source of safe shelter in circumstances that include:

- a. The shelter services program does not have a physical shelter facility available;
- b. The physical shelter facility is at capacity and no space is available for those seeking emergency safe shelter;
- c. The distance between the individual or family seeking safe shelter and the shelter facility prohibits immediate access to the facility;
- d. The individual or family seeking safe shelter has special needs best served by shelter provision through a hotel or motel placement; and
- e. The former resident of the shelter facility no longer needs primary shelter but would benefit from program managed subsidized or transitional housing services that are offered through a temporary hotel or motel placement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6951. Documentation of Services

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Critical Minimum Standards

1. Standard 19.1. The program must have written policies and procedures to ensure that all services provided are documented in written or electronic form and that those records are maintained in a manner that protects the confidentiality and privacy rights of individuals and families receiving services.

2. Standard 19.2. Written records of services provided in individual, group, and family settings must be maintained by the program in a secure, locked storage area that is accessible only by staff members, authorized volunteers, and administrative staff members who are responsible for supervision and internal review of service records for quality assurance purposes.

3. Standard 19.3. The program must ensure that electronic records of services to survivors are accessible only to those listed in 19.2 and that the records cannot be accessed remotely by anyone outside of the organization.

C. Minimum Standards

1. Standard 19.4. Programs must have policies in place defining record retention that includes the length of time specific records are retained and the procedures for destroying both paper and electronic records.

2. Standard 19.5. Written records documenting services must be denoted in the following manner:

- a. notes are entered in chronological order;
- b. notes have the full signature of the advocate or counselor documenting the service;
- c. entries are to be made immediately after all survivor contacts;

- d. white-out is not to be used;
- e. notes are not to contain any diagnoses or clinical assessments;
- f. notes on one survivor do not include other survivor's names;
- g. errors are to be corrected by drawing a line through the error and then writing "error" above the line along with the initials of the writer; and
- h. only necessary facts are recorded.

3. Standard 19.6. Advocacy, counseling, and individual service planning documentation should include the following:

- a. demographic data;
- b. danger and lethality assessments;
- c. history of abuse;
- d. safety planning;
- e. description of the abuser;
- f. consent for services for the survivors and their children, if applicable;
- g. individual service plans;
- h. children's assessments, if applicable;
- i. notification of limitations of confidentiality;
- j. release of liability forms;
- k. release of confidentiality forms, if applicable;

and

- l. service notes.

4. Standard 19.7. All personnel of a domestic violence program with access to records of direct services provided by the program must have a signed confidentiality agreement on file. Programs should identify in their confidentiality policies the specific staff members, as identified by job responsibility and title; that will have access to confidential information, records, and information systems.

5. Standard 19.8. A data collection and record keeping system must be developed that allows for the efficient retrieval of data needed to measure the domestic violence program's performance in relation to its stated goals, objectives, and the accounting of funds received for contracted services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

§6953. Restricted Services

A. Guiding Principles. These standards require that family violence programs establish common quality intervention services. Participation in intervention services shall be voluntary.

B. Minimum Standards

1. Standard 20.1. The program must not offer services that could jeopardize the physical or emotional safety of the survivor. These services include couples counseling, family counseling that includes the presence of an alleged batterer, and mediation services.

2. Standard 20.2. No program staff member with responsibility to provide direct services to survivors or to supervise or direct programs for survivors shall be allowed to participate in or to lead batterer intervention program services. These two programs must remain entirely separate so that it is apparent to survivors that there is no conflict of interest within the program. The program must not allow

batterer intervention services to take place on or near the premises of the family violence program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:2121-2128.

HISTORICAL NOTE: Promulgated by the Department of Children and Family Services, Economic Stability Section, LR 44:

Family Impact Statement

The proposed Rule is not anticipated to have an adverse impact on family formation, stability, and autonomy as described in R.S. 49:972. This Rule is anticipated to have a positive effect on the stability and functioning of the family by assisting the family to live a life free from violence and abuse.

Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

All interested persons may submit written comments through, November 28, 2017, to Sammy Guillory, Deputy Assistant Secretary of Family Support, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70804.

Public Hearing

A public hearing on the proposed Rule will be held on November 28, 2017 at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-127 Baton Rouge, LA beginning at 11 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Marketa Garner Walters
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Family Violence Prevention and Intervention Program

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the publication fees associated with the proposed rule changes, which are estimated to cost the Louisiana Department of Children and Family Services (DCFS) \$12,354, it is not anticipated that DCFS will incur any other costs or savings as a result of this rule. The proposed rule codifies R.S. 46:2121-2128, which provides for the guiding principles of the Family Violence Prevention and Intervention program which governs the development of community-based shelters and support services for victims of domestic violence. Also, the proposed rule provides specific minimum program standards to govern the administration and eligibility of

program providers, as well as, provide standards in developing quality services and implementation of best practices.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Family Violence Prevention and Intervention program is a program that currently operates within DCFS. The proposed rule codifies the program's existing administrative procedures and establishes minimum standards and best practices for providers. The proposed rule change will not affect state or local governmental revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

To the extent that a provider does not meet the minimum standards set forth in the proposed rule, then the provider must come into compliance with the standard, which may cause the provider to incur costs. If the provider does not come into compliance with the minimum standards, then the provider will no longer be eligible to participate in the program.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule will not have an impact on competition and employment for low-income families.

Sammy Guillory
Deputy Assistant Secretary
1710#041

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Children and Family Services Office of Family Support

Electronic Benefits Issuance System (LAC 67:III.403)

In accordance with the provisions of the Administrative Procedure Act R.S. 49:953(A), the Department of Children and Family Services (DCFS) proposes to amend LAC 67:III, Subpart 1, General Administrative Procedures, Chapter 4, Electronic Benefits Issuance System, Section 403, Cash Benefits.

Pursuant to the authority granted to the department by the Food and Nutrition Services (FNS), the department is amending Section 403 to eliminate the dormancy period for inactive electronic benefits transfer (EBT) benefits. This change will give cardholders longer access to inactive benefits and eliminate the notices to clients regarding dormant benefits.

Title 67

SOCIAL SERVICES

Part III. Family Support

Subpart 1. General Administrative Procedures

Chapter 4. Electronic Benefits Issuance System

§403. Cash Benefits

[Formerly §402]

A. ...

B. Benefits are delivered in this manner for households certified on an on-going basis. Benefits can accumulate but are accounted for according to the month of availability and will be withdrawn on a first-in-first-out basis. Each month's benefits with no activity by the client for a period of 365 days from the date of availability will be expunged and will not be available to the household after expungement. FITAP benefits which have been expunged may be reauthorized for

availability if the recipient has good cause for not having accessed them during the original availability period.

AUTHORITY NOTE: Promulgated in accordance with 7 CFR 272.3(c)(1)(ii) and P.L. 104-193, P.L. 110-246.

HISTORICAL NOTE: Promulgated by the Department of Social Services, Office of Family Support, LR 24:1322 (July 1998) amended LR 33:1878 (September 2007), repromulgated LR 33:2203 (October 2007), LR 35:689 (April 2009), amended by the Department of Children and Family Services, Office of Family Support, LR 44:

Family Impact Statement

The proposed Rule is not anticipated to have an adverse impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

The proposed Rule is not anticipated to have an impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed Rule is not anticipated to have an adverse impact on small businesses as defined in the Regulatory Flexibility Act.

Provider Impact Statement

The proposed Rule is not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

All interested persons may submit written comments through, November 28, 2017 to Sammy Guillory, Deputy Assistant Secretary of Family Support, Department of Children and Family Services, P.O. Box 94065, Baton Rouge, LA 70804.

Public Hearing

A public hearing on the proposed Rule will be held on November 28, 2017 at the Department of Children and Family Services, Iberville Building, 627 North Fourth Street, Seminar Room 1-129, Baton Rouge, LA beginning at 10:00 a.m. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at said hearing. Individuals with disabilities who require special services should contact the DCFS Appeals Unit at least seven working days in advance of the hearing. For assistance, call (225) 342-4120 (voice and TDD).

Marketa Garner Walters
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Electronic Benefits Issuance System

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change eliminates the dormancy period for inactive Electronic Benefits Transfer (EBT). Therefore, if a client does not use benefits within 365 days of availability, then benefits for that time period are expunged.

Currently, if a client does not use Family Independence Temporary Assistance (FITAP) benefits within 180 days of availability, then benefits are placed in a dormant status for up to 185 days and can only be reactivated upon request of the client. After 185 days, the benefits are expunged.

It is anticipated that Louisiana Department of Children and Family Services (DCFS) will incur a one time cost in FY 18 of

\$320 associated with the publication fee of the proposed rule change. This one time cost will be offset by an estimated \$12,060 in savings in FY 18 and \$24,120 in savings in FY 19 and future fiscal years. The estimated savings result from eliminating the need for the department to send client notices regarding dormant benefits.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change will not affect state or local governmental revenue collections.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed rule change may have an economic impact to FITAP clients whose benefits are not used within 365 days. Currently, DCFS sends the client up to two notifications if benefits are in a dormant status. This notification gives the client the opportunity to request that benefits are reactivated before the benefits are expunged. Under the proposed rule change, clients will not receive notification that their unused benefits are still available. This lack of notification may result in a client being unaware that the benefits are available before it is expunged.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule change does not affect competition and/or employment.

Sammy Guillory
Deputy Assistant Secretary
1710#039

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Economic Development Office of the Secretary Office of Business Development and

Louisiana Economic Development Corporation

Small Business Loan and Guaranty Program (SBL and GP)
(LAC 19:VII.Chapter 1)

The Louisiana Department of Economic Development, Office of the Secretary, Office of Business Development, and Louisiana Economic Development Corporation, pursuant to the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., and under the authority of R.S. 36:104, 36:108, 51:2302, and 51:2312, hereby provide notice of their intent to amend, supplement and clarify portions of the existing rules of the Small Business Loan and Guaranty Program (SBL and GP) provided in LAC Title 19, Part VII, Subpart 1, Chapter 1, amending Section 107.B.1, 3, and 4.b by broadening the eligibility requirements for small businesses participating in this Program, and including some slight rewording to clarify the meaning, but not to change the intent, of some of the rule's provisions; and amending Section 109.C.1 through 5, by reducing the dollar value of collateral requirements for obtaining loan guaranties, and including some slight rewording to clarify the meaning, but not to change the intent of some of the rule's provisions. A new Section 117 is being added, providing for the creation of guidelines to interpret, construe or explain the meaning and intent of the rules, but not to change the rules.

Title 19
CORPORATIONS AND BUSINESS
Part VII. Louisiana Economic Development
Corporation

Subpart 1. Small Business Loan and Guaranty Program
(SBL and GP)

Chapter 1. Loan and Guaranty Policies for the Small
Business Loan and Guaranty Program
(SBL and GP)

§107. Eligibility/Ineligibility for Participation in This Program

A. ...

B. The following businesses shall be eligible for participation in this program, except for those ineligible businesses and purposes hereinafter shown:

1. small business concerns authorized to do and doing business in Louisiana, that maintain an office in Louisiana;
2. certified small and emerging businesses (SEBs);
3. disabled person's business enterprises authorized to do and doing business in Louisiana, that maintain an office in Louisiana; or
4. funding requests for any business purpose may be considered, except for the following ineligible businesses or purposes:
 - a. ...
 - b. bars, saloons, daiquiri shops, packaged liquor stores, including any other business or project established for the principal purpose of dispensing alcoholic beverages;
 - c. - i. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:446 (June 1989), amended LR 23:41 (January 1997), LR 26:2255 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:994 (April 2012), LR 44:

§109. General Loan, Credit, Guaranty and Participation Provisions

A. - B.3. ...

C. Collateral

1. The value of the collateral shall be no less than the guaranteed portion of the loan.
 2. ...
 3. Collateral Value Determination
 - a. The appraiser must be certified by a recognized organization in the area of the collateral.
 - b. The appraisal shall not be more than 90 days old.
 4. Acceptable collateral may include, but shall not be limited to, the following:
 - a. - b. ...
 - c. personal guarantees may be used only as additional collateral and will not count toward the value of the collateral; if to be used, signed and dated Personal Financial Statements of the guarantors must also be submitted to LEDC;
 - d. ...
 5. Unacceptable collateral may include, but shall not be limited to the following:
 - a. ...
 - b. personal items or borrower's primary residence;
- C.5.c. - H.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 15:448 (June 1989), amended LR 23:41 (January 1997), LR 26:2256 (October 2000), amended by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 38:995 (April 2012) LR 40:274 (February 2014), LR 44:

§117. Guidelines

A. The Louisiana Economic Development Corporation (LEDC), or the Louisiana Department of Economic Development, also known as Louisiana Economic Development (LED), as the administrator of this program for LEDC, may make, create, or issue from time to time Guidelines interpreting, construing, explaining and/or supplementing these Rules; and may revise, supplement, or otherwise change or modify the guidelines at any time with or without notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, Office of Business Development and Louisiana Economic Development Corporation, LR 44:

Family Impact Statement

The proposed Rule amendment is not anticipated to have an impact on family formation, stability and autonomy, as provided in R.S. 49:972.

Poverty Impact Statement

The proposed Rule amendment is not anticipated to have an impact on child, individual, or family poverty, as provided in R.S. 49:973.

Small Business Analysis

The proposed Rule amendment is anticipated to have a positive impact on small businesses, as defined in the Regulatory Flexibility Act (LA. R.S. 49:965.2 through 965.8), by broadening the eligibility requirements of small businesses doing business and maintaining an office in Louisiana and by reducing the dollar value of guaranty collateral requirements for obtaining loan guaranties for small businesses, thereby making such loan guaranties easier to obtain.

Provider Impact Statement

The proposed Rule amendment is not anticipated to have an impact on providers of services, as defined in HCR 170 of the 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments and/or inquiries regarding the proposed Rule amendment directed to: Robert L. Cangelosi, Deputy General Counsel, Legal Division, Louisiana Department of Economic Development, P.O. Box 94185, Baton Rouge, LA 70804-9185; or physically delivered to: LaSalle Building, Eleventh Floor, Room 1121, 617 North Third Street, Baton Rouge, LA, 70802. All comments, etc., must be submitted and received not later than 4 p.m. on Thursday, November 16, 2017.

Public Hearing

No public hearing will be held unless requested within 20 days after publication of the Rule amendment by 25 persons, by a governmental subdivision or agency, by an association having not less than 25 members, or by a committee of either house of the legislature to which the proposed rule

change has been referred under the provisions of R.S. 49:968.

In the event such request(s) is(are) received and a public hearing is to be held, the public hearing will be held on the proposed action on Tuesday, November 28, 2017, at 10:30 a.m., in the LaSalle Building, Eleventh Floor, Conference Room 1171, 617 North Third Street, Baton Rouge, LA 70802. No preamble regarding the proposed action is available.

Mandi D. Mitchell
Assistant Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Small Business Loan and Guaranty Program (SBL and GP)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will result in additional costs for the LA Dept. of Economic Development (LED) to the extent firms participating in the Small Business Loan and Guaranty Program default on loans guaranteed by the department. The program is administered by existing LED staff and the funding will be absorbed utilizing the LA Economic Development Corporation's dedicated fund operating budget and by LED under its existing appropriation.

Small firms doing business and maintaining an office in Louisiana will have less stringent collateral requirements for small business loan guaranties limited to only the guaranteed portion of a loan, thereby making such loans and guaranties easier to obtain. For reference, LED would issue guaranties between 50% and 75% of the loan, and would only assume any additional costs associated with the unguaranteed portion of the loan in the event of a default. The LED states that defaults have been low, historically totaling approximately 2% of eligible firms, and that the department has not had losses associated with defaults in the past because guaranties previously had a 1:1 collateral-to-loan ratio. As a result of the altered collateral-to-loan ratio, LED has additional exposure under the proposed rule changes.

Furthermore, the proposed rule changes expand the types of firms eligible to participate in the Small Business Loan and Guaranty Program. Under the proposed rule changes, small business concerns and disabled person's business enterprises authorized for operation and maintaining offices in Louisiana are allowed to participate in the program. Under the present rules, firms of the aforementioned types must be domiciled in Louisiana and have owners and/or principal stockholders that reside in Louisiana. As a result the proposed rules relax restrictions on the types of firms that may participate in the program, therefore more firms may participate to the extent they qualify.

As a result of the collateral restrictions being relaxed and the amount of firms who may participate increasing, the LED has a potential exposure that it has not had previously. However, LED anticipates a low default rate in line with historical norms. In the event the rate of defaults increases, the LED may require additional resources in the future to repay the unguaranteed portions of loans it has backed.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes expand the types of firms eligible to participate in the Small Business Loan and Guaranty Program. Under the proposed rule changes, small business concerns and disabled person's business enterprises authorized for operation and maintaining offices in Louisiana are allowed to participate in the program. Under the present rules, firms of the aforementioned types must be domiciled in Louisiana and have owners and/or principal stockholders that reside in Louisiana. As a result the proposed rules relax restrictions on the types of firms that may participate in the program, therefore more firms may participate to the extent they qualify. Furthermore, small businesses doing business and maintaining an office in Louisiana will economically benefit from these rule amendments providing a reduction in the collateral requirements for small business loan guaranties to only the guaranteed portion of a loan, thereby making such loans and guaranties easier to obtain.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Small business enterprises doing business and maintaining an office in Louisiana seeking to borrow funds and obtaining small business loan guaranties under this program will gain competitively over businesses that do not seek or receive the program's benefits. Employment opportunities will likely be enhanced and increased in small business enterprises that receive credit assistance through this program.

Mandi D. Mitchell
Assistant Secretary
1710#035

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs and Criminal Investigations Division

Hazardous Waste Authorization
Resource Conservation and Recovery Act (RCRA)
(LAC 33:V.108, 1101, 1109, 1111, 1113,
1901, 2245, 2299, 4105, and 4301)(HW123)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Hazardous Waste regulations, LAC 33:V.108, 1101, 1109, 1111, 1113, 1901, 2245, 2299, 4105, and 4301. (HW123)

This Rule amends the regulations to correct errors and clarifies certain hazardous waste generator requirements, land disposal restrictions and recycling requirements. This Rule is in response to EPA's review of the state's authorized program. The amendments are necessary to maintain equivalency and authorization of the state's hazardous waste program. The basis and rationale for this rule are to maintain EPA's authorization of the state's hazardous waste program. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33

ENVIRONMENTAL QUALITY

Part V. Hazardous Waste and Hazardous Materials

Subpart 1. Department of Environmental Quality— Hazardous Waste

Chapter 1. General Provisions and Definitions

§108. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators

A. - F.2. ...

3. a conditionally exempt small quantity generator may either treat or dispose of his acute hazardous waste in an on-site facility or ensure delivery to an off-site treatment, storage, or disposal facility, either of which, if located in the United States, is:

F.3.a. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Environmental Assessment, Environmental Planning Division, LR 27:706, 716 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2540 (October 2005), LR 32:606 (April 2006), LR 36:2554 (November 2010), LR 38:774 (March 2012), amended by the Office of the Secretary, Legal Division, LR 43:1138 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

Chapter 11. Generators

Subchapter A. General

§1101. Applicability

A. - C. ...

D. A farmer disposing of waste pesticides from his own use which are hazardous wastes is not required to comply with the standards in this Chapter or other standards in the LAC 33:V.Chapters 3, 5, 7, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 31, 32, 33, 35, 37, and 43 for those wastes, provided he triple rinses each emptied pesticide container in accordance with the provisions of LAC 33:V.109, *Empty Container*.3 and disposes of the pesticide residues on his own farm in a manner consistent with the disposal instructions on the pesticide label.

E. - I. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:398 (May 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 22:20 (January 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:660 (April 1998), LR 24:1106 (June 1998), LR 24:1693 (September 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:709 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:822 (May 2006), LR 38:782 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

§1109. Pre-Transport Requirements

A. - E.1.a.iv.(a). ...

(b). documentation that the unit is emptied at least once every 90 days;

E.1.b. - F.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:433 (August 1987), LR 16:47 (January 1990), LR 16:220 (March 1990), LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 18:1256 (November 1992), LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1693 (September 1998), LR 25:437 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:277 (February 2000), LR 26:2470 (November 2000), LR 27:293 (March 2001), LR 27:709, 716 (May 2001), LR 27:1014 (July 2001), LR 30:1673 (August 2004), amended by the Office of Environmental Assessment, LR 31:1571 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:823 (May 2006), LR 33:2102 (October 2007), LR 34:622 (April 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended LR 38:776 (March 2012), amended by the Office of the Secretary, Legal Division, LR 43:1140 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

§1111. Recordkeeping and Reporting

A. - B.1.h. ...

2. Generators who also dispose, treat, or store hazardous waste on-site shall also submit annual reports to the Office of Environmental Services, in accordance with the reporting provisions of LAC 33:V.Chapters 3, 5, 7, 11, 15, 17, 19, 21, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 37, and 43, reporting total quantity, by type, of waste handled, and how that waste was disposed, treated, or stored. Generators must maintain on site a copy of each report submitted to the department for a period of at least three years from the date of the report. Reporting for exports of hazardous waste is not required on the annual report form. A separate annual report requirement is set forth in LAC 33:V.1113.G.

C. - E.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 16:220 (March 1990), LR 17:365 (April 1991), LR 20:1000 (September 1994), LR 20:1109 (October 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2470 (November 2000), LR 27:42 (January 2001), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2102 (October 2007), LR 38:776 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

§1113. Exports of Hazardous Waste

A. Applicability. Any person who exports hazardous waste to a foreign country, from a point of departure in the state of Louisiana, shall comply with the requirements of this Chapter and with the special requirements of this Section. This Section establishes requirements applicable to exports of hazardous waste. Except to the extent LAC 33:V.1113.I provides otherwise, a primary exporter of hazardous waste shall comply with the special requirements of this Section, and a transporter who transports hazardous waste for export shall comply with applicable requirements of LAC 33:V.Chapter 13.

B. - D.4. ...

5. In conjunction with the United States Department of State, the United States Environmental Protection Agency (EPA) shall provide a complete notification to the receiving country and any transit countries. A notification is complete when the EPA receives a notification which the EPA determines satisfies the requirements of Paragraph D.1 of this Section. Where a claim of confidentiality is asserted with respect to any notification information required by Paragraph D.1 of this Section, the EPA may find the notification not complete until any such claim is resolved in accordance with 40 CFR 260.2.

6. Where the receiving country consents to the receipt of the hazardous waste, the EPA shall forward an EPA acknowledgement of consent to the primary exporter for purposes of Paragraph E.8 of this Section. Where the receiving country objects to receipt of the hazardous waste or withdraws a prior consent, the EPA shall notify the primary exporter in writing. The EPA will also notify the primary exporter of any responses from transit countries.

E. - E.5. ...

6. The primary exporter must require the consignee to confirm in writing the delivery of the hazardous waste to that facility and to describe any significant discrepancies (as defined in LAC 33:V.1516.C.1) between the manifest and the shipment. A copy of the manifest signed by such facility may be used to confirm delivery of the hazardous waste.

E.7. - I.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 16:220 (March 1990), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 20:1109 (October 1994), LR 21:944 (September 1995), LR 22:20 (January 1996), amended by the Office of the Secretary, LR 22:344 (May 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:661 (April 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2471 (November 2000), LR 27:710 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:824 (May 2006), LR 33:2102 (October 2007), LR 34:72 (January 2008), LR 34:622 (April 2008), LR 38:782 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

Chapter 19. Tanks

§1901. Applicability

A. - D. ...

E. Tanks meeting the requirements for the accumulation time exclusion of LAC 33:V.305.C and 1109.E.1 are subject to the requirements of LAC 33:V.1903.A, 1905.B-H, 1907, 1909, 1911, 1913, 1915 (except 1915.C), 1917, 1919, 1921, and 4438.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 13:651 (November 1987), LR 16:614 (July 1990), LR 18:1375 (December 1992), LR 22:819 (September 1996), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1107 (June 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 34:1013 (June 2008), LR 36:1235 (June 2010), repromulgated LR 36:1536 (July 2010), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

Chapter 22. Prohibitions on Land Disposal

Subchapter A. Land Disposal Restrictions

§2245. Generators' Waste Analysis, Recordkeeping, and Notice Requirements

A. - K. ...

L. Small quantity generators with tolling agreements pursuant to LAC 33:V.1107.A.4 shall comply with the applicable notification and certification requirements of Paragraph A of this Section for the initial shipment of the waste subject to the agreement. Such generators shall retain on-site a copy of the notification and certification, together with the tolling agreement, for at least three years after termination or expiration of the agreement. The three-year record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the administrative authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 15:378 (May 1989), amended LR 16:1057 (December 1990), LR 17:658 (July 1991), LR 21:266, 267 (March 1995), LR 21:1334 (December 1995), LR 22:22 (January 1996), LR 22:820 (September 1996), LR 22:1130 (November 1996), LR 23:565 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:669 (April 1998), LR 24:1728 (September 1998), LR 25:447 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:281 (February 2000), LR 26:2478 (November 2000), LR 27:295 (March 2001), LR 27:711 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2459 (October 2005), LR 33:2109 (October 2007), LR 34:996 (June 2008), amended by the Office of the Secretary, Legal Division, LR 43:1144 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

Subchapter B. Hazardous Waste Injection Restrictions

§2299. Appendix—Tables 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

Table 11
Appendix VII, Table 1, Effective Dates of Surface Disposed Wastes (Non-Soil and Debris) Regulated in the LDRs, of 40 CFR 268, published July 1, 2012, is hereby incorporated by reference.

Table 12. Reserved. (see Table 5)

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et. seq., and specifically R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 16:1057 (December 1990), amended LR 17:658 (July 1991), LR 21:266 (March 1995), LR 22:22 (January 1996), LR 22:834 (September 1996), LR 23:566 (May 1997), LR 24:301 (February 1998), LR 24:670 (April 1998), LR 24:1732 (September 1998), LR 25:451 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:282 (February 2000), LR 27:295 (March 2001), LR 29:322 (March 2003), LR 30:1682 (August 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 32:828 (May 2006), LR 32:1843 (October 2006), LR 34:625 (April 2008), LR 34:1014 (June 2008), LR 38:777 (March 2012), amended by the Office of the Secretary, Legal Division, LR 39:2487, 2492 (September 2013), amended by the Office of the Secretary, Legal Division, LR 43:1145 (June 2017), amended by

the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

Chapter 41. Recyclable Materials

§4105. Requirements for Recyclable Material

A. - A.1. ...

a. industrial ethyl alcohol that is reclaimed, except that, unless otherwise provided in an international agreement as specified in LAC 33:V.1113.I:

A.1.a.i. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 11:988 (October 1985), amended LR 11:1139 (December 1985), LR 12:319 (May 1986), LR 13:84 (February 1987), LR 13:433 (August 1987), LR 16:219 (March 1990), LR 17:362 (April 1991), repromulgated LR 18:1256 (November 1992), amended LR 18:1375 (December 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), LR 22:837 (September 1996), LR 23:579 (May 1997), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:685 (April 1998), LR 24:1108 (June 1998), LR 24:1742 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 32:608 (April 2006), LR 38:779 (March 2012), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

Chapter 43. Interim Status

§4301. Purpose and Applicability

A. ...

B. Qualifying for Interim Status. Any person who owns or operates an existing HWM facility or a facility in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to the requirement to have a RCRA permit shall have interim status and shall be treated as having been issued a permit to the extent he or she has:

B.1. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et. seq., and specifically R.S. 30:2180 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Solid and Hazardous Waste, Hazardous Waste Division, LR 10:200 (March 1984), amended LR 10:496 (July 1984), LR 13:84 (February 1987), LR 16:220 (March 1990), LR 17:362 (April 1991), LR 18:1256 (November 1992), LR 20:1000 (September 1994), LR 21:266 (March 1995), amended by the Office of Waste Services, Hazardous Waste Division, LR 24:1743 (September 1998), LR 25:482 (March 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1466 (August 1999), LR 26:2498 (November 2000), LR 27:713 (May 2001), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2474 (October 2005), LR 31:3121 (December 2005), LR 32:612 (April 2006), LR 33:2126 (October 2007), LR 34:632 (April 2008), amended by the Office of the Secretary, Legal Division, LR 43:1146 (June 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by HW123. Such comments must be received no later than December 6, 2017, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of HW123. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on November 29, 2017, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Hazardous Waste Authorization Resource Conservation and Recovery Act (RCRA)

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There are no anticipated implementation costs or savings to state or local governmental units as a result of the proposed rule change.

The proposed rule makes minor corrections and clarifications to the Louisiana hazardous waste regulations to ensure state standards are equivalent to federal regulations. The U.S. EPA conducts periodic reviews of the Louisiana hazardous waste regulations in order to verify that they are as stringent, or more stringent, than the equivalent federal regulations. This equivalency is a requirement of LDEQ maintaining an authorized hazardous waste regulatory program under the oversight of EPA. The most recent review resulted in

- an additional list of minor corrections needing to be made to maintain this equivalency to the federal regulations.
- II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)
- There is no anticipated effect on revenue collections of state or local governmental units as a result of the proposed rule change.
- III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)
- Conditionally exempt small quantity generators of hazardous waste, or individuals who have been issued a hazardous waste permit in accordance with LAC 33:V will be affected, however these effects are expected to be nominal.
- IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)
- There should be no effect on competition and employment

Herman Robinson
General Counsel
1710#024

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs and Criminal Investigations Division

Requests for Confidentiality (LAC 33:I.501)(OS095)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Office of the Secretary regulations, LAC 33:I.501 (OS095).

This Rule will revise regulations concerning the delivery methods and locations of requests for confidentiality of information and/or records. The present regulation is vague regarding delivery of request for confidentiality of information or records. The revision will simplify the instruction for concerned parties. The basis and rationale for this rule are to clarify instructions for delivery of requests for confidentiality which are submitted to the department. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33 ENVIRONMENTAL QUALITY Part I. Office of the Secretary

Subpart 1. Departmental Administrative Procedures Chapter 5. Confidential Information Regulations §501. Scope

A. Department of Environmental Quality information and records obtained under the Louisiana Environmental Quality Act, or by any rule, regulation, order, license, registration, or permit term or condition adopted or issued thereunder, or by any investigation authorized thereby, shall be available to the public, unless confidentiality is requested in writing by:

1. US mail to Louisiana Department of Environmental Quality, Office of the Secretary, Legal Division, Attention: General Counsel, P.O. Box 4302, Baton Rouge, LA 70821-4302; or

2. courier (e.g., personal delivery, Federal Express, UPS, etc.) to Louisiana Department of Environmental Quality, Office of the Secretary, Legal Division, Attention: General Counsel, 602 North Fifth Street, Baton Rouge, LA 70802.

B. - B.6. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2030.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, LR 22:342 (May 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2439 (November 2000), LR 30:742 (April 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2432 (October 2005), LR 33:2078 (October 2007), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:

Family Impact Statement

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Poverty Impact Statement

This Rule has no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by OS095. Such comments must be received no later than December 6, 2017, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigation Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of OS095. These proposed regulations are available on the internet at www.deq.louisiana.gov/portal/tabid/1669/default.aspx.

Public Hearing

A public hearing will be held on November 29, 2017, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

**FISCAL AND ECONOMIC IMPACT STATEMENT
FOR ADMINISTRATIVE RULES**

RULE TITLE: Requests for Confidentiality

**I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO
STATE OR LOCAL GOVERNMENT UNITS (Summary)**

There are no anticipated implementation costs or savings to state or local governmental units as a result of the proposed rule.

Information and records obtained by the Department of Environmental Quality are available to the public, unless confidentiality is requested in writing. The proposed rule revises and clarifies the regulations concerning the delivery methods and locations to submit requests for confidentiality of information and/or records.

**II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE
OR LOCAL GOVERNMENTAL UNITS (Summary)**

There is no anticipated effect on revenue collections of state or local governmental units as a result of the proposed rule.

**III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO
DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL
GROUPS (Summary)**

There will be no costs or benefits to directly affected persons or non-governmental groups as a result of the proposed rule.

**IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT
(Summary)**

There is no anticipated effect on competition or employment in the public or private sector due to the proposed rule.

Herman Robinson
General Counsel
1710#025

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Office of the Governor

**Board of Examiners for New Orleans and Baton Rouge
Steamship Pilots for the Mississippi River**

General Provisions; Qualifications and Examination of
Pilots; Standards of Conduct; Investigations and
Enforcement and Drug and Alcohol Policy
(LAC 46:LXX.6105, 6206, 6207, 6304, 6307, and 6312)

In accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River hereby gives notice of intent to promulgate rules and to repeal and reenact its rules. The proposed Rule restates existing rules and will be reenacted for the purpose of codification. The Rule repeals superfluous regulations already existing in LAC 46:LXX, Subpart 6, Board of Louisiana River Pilot Review and Oversight. The Rule clarifies and provides more stringent educational and licensing requirements for applicants seeking selection into the Board of Examiners' Pilot Development Program. The Rule streamlines the application process and provide greater privacy protection for applicants. New rules are in the public's interest and will promote public safety. The new Rule re-establishes recency requirements for pilots and provide for the standards of conduct associated therewith.

**Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS**

Part LXX. River Pilots

**Subpart 3. Board of Examiners for the New Orleans and
Baton Rouge Steamship Pilots**

Chapter 61. General Provisions

§6105. Rules, Records, Meetings, Application

A. All board rules must be adopted by a majority of the examiners. The board shall maintain records in accordance with R.S. 44:1 et seq., and all other state laws. The board shall conduct its meetings in accordance with R.S. 42:4.1 et seq., and any other state laws.

B. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2471 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:494 (March 2010), LR 38:3165 (December 2012), LR 44:

**Chapter 62. Qualifications and Examination of Pilots
§6206. Licenses/Education/Experience**

A. - A.1.

a. Notwithstanding Paragraph A.1 of this Section, an applicant with First Class pilotage from mile marker 92.7 AHP to mile marker 225 AHP shall be eligible for selection into the Pilot Development Program. However, an applicant selected for the Pilot Development Program shall be required to obtain First Class pilotage from mile marker 88.0 AHP to Baton Rouge Railroad and Highway Bridge prior to commissioning.

2. An applicant must hold a Bachelor degree or higher degree from an accredited maritime academy approved by and conducted under rules prescribed by the Federal Maritime Administrator and listed at title 46, *Code of Federal Regulations*, part 310.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2473 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:495 (March 2010), LR 38:3166 (December 2012), LR 44:

§6207. Notice of Apprentice Selection

A. At least 40 days prior to an apprentice selection, NOBRA must inform the board, in writing, that a selection will be held and the date of the selection.

B. At least 35 days prior to the apprentice selection, the board will advertise the date of the apprentice selection, as well as the deadline for submission of application materials, in at least two periodicals, one of which shall have a circulation of the greater New Orleans area and one of which shall have a circulation of the greater Baton Rouge area. In addition, all relevant dates will be posted on the board's website.

C. - D. ...

E. At least 18 days prior to the apprentice selection, the board will forward to NOBRA a list of all qualified candidates who meet the criteria for selection, as enumerated in the board's rules.

F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2474 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:496 (March 2010), LR 38:3166 (December 2012), LR 44:

Chapter 63. Standards of Conduct

§6304. Definitions

A. As used in this Chapter, the following terms, unless the context otherwise requires or unless redefined by a particular part hereof, shall have the following meanings.

* * *

Association Officer—any person duly elected by the members of NOBRA to serve as vice president(s), secretary/treasurer or other officer of the association.

Association President—any person duly elected by the members of NOBRA to serve as president of the association.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2475 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010), LR 38:3167 (December 2012), LR 44:

§6307. Standards of Conduct

A. - A.6. ...

7. neglect of duty;
8. failure to maintain recency; and
9. any violation of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 30:2476 (November 2004), amended by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, LR 36:498 (March 2010), LR 38 3167 (December 2012), LR 44:

§6312. Recency Requirement

A. The purpose of this Section is to ensure that pilots retain their skills in ship handling and maintain familiarity on the NOBRA route.

B. All pilots shall complete at least 60 turns each calendar year. A calendar year commences on the first of January each year.

1. The president of the board and the president of the association shall be exempt from the recency requirement.

2. Members of the examiners and association officers shall be considered recent by completing 20 turns or 20 observer turns each calendar year.

3. A turn shall be considered a vessel transit of at least 20 miles.

4. Work performed at the VTC shall not be considered as a turn for the purpose of recency. However, a pilot is required to be recent in order to stand watch at the VTC, unless specifically waived by the board for a temporary condition not effecting performance of duty.

5. Notwithstanding Paragraph 4 above, work performed at the VTC shall be considered as a turn for the

purpose of recency for all pilots who have been commissioned for 20 years or more.

6. It is the duty of any pilot who fails to maintain recency to remove themselves from rotation and immediately notify the board.

C. Failure of a pilot to remove themselves from rotation and notify the board shall be deemed a violation of these rules and shall result in an investigation.

D. Before a non-recent pilot is eligible to resume pilotage duty, the pilot shall be required to successfully complete, to the exclusive and unilateral satisfaction of the board, a specifically designed program to re-orient said pilot to Mississippi River pilotage.

1. Before a non-recent pilot is eligible to resume pilotage duty, the Board reserves the right to require the pilot to satisfactorily pass a current United States Coast Guard approved physical (Merchant Mariner Physical Examination Report).

AUTHORITY NOTE: Promulgated in accordance with R.S. 34:1041 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Board of Examiners for New Orleans and Baton Rouge Steamship Pilots, LR 44:

Family Impact Statement

The proposed Rule of the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability, and autonomy. The implementation of these amended rules will have no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. family earnings and family budgets;
5. the behavior and personal responsibility of children; and
6. the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Analysis

The impact of the proposed Rule on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the

drafting of the proposed rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of services;
2. the total direct and indirect effect on the cost to providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

All interested persons are invited to submit written comments on the proposed regulations. Such comments must be in writing and received no later than November 10, 2017 at 4:30 p.m. and should be sent to Captain Robert D. Heitmeier, President of the Board of Examiners for New Orleans and Baton Rouge Steamship Pilots for the Mississippi River, 2805 Harvard Avenue, Suite 101, Metairie, LA 70006. The proposed regulations are available for inspection at the Office of the State Register website: <http://www.doa.la.gov/Pages/osr/Index.aspx>.

Captain Robert D. Heitmeier
President

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: General Provisions; Qualifications and Examination of Pilots; Standards of Conduct; Investigations and Enforcement and Drug and Alcohol Policy

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes will have no impact on state or local governmental unit expenditures. The proposed rule changes restate and reenact existing practices for the purpose of codification. The proposed rule changes repeal duplicate regulations already existing in Title 46-Professional and Occupations Standards, Part LXX. River Pilots, Subpart 6. Board of Louisiana River Pilot Review and Oversight. The proposed rule changes clarify education and licensing requirements for applicants seeking selection into the Board of Examiners' Pilot Development Program, streamline the application process and provide greater privacy protection for applicants. Proposed new rules re-establish recency requirements for pilots and provide for the standards of conduct associated therewith.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes are anticipated to have no impact of revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes generally will not result in additional costs for directly affected persons or non-governmental groups. However, the proposed rule change does reinstate recency requirements to ensure that pilots retain skills

in ship handling and to maintain familiarity of the river route between New Orleans and Baton Rouge. Failure to maintain specified recency requirements may require pilots to successfully complete a specifically designed program and U.S. Coast Guard approved physical before resuming piloting activities.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes reinstate recency requirements as noted above. Failure to maintain recency requirements may result in suspension from piloting duties until the pilot completes a specifically designed program and acquires a current physical.

Brian J. Eiselen
Board Counsel
1710#020

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Dentistry

Fees and Costs; Anesthesia/Analgesia
Administration; Continuing Education Requirements
(LAC 46:XXXIII.134, 306, 706, 1505,
1607, 1611, 1613, 1709, and 1711)

In accordance with the applicable provisions of the Administrative Procedure Act, R.S. 49:950, et seq., the Dental Practice Act, R.S. 37:751 et seq., and particularly R.S. 37:760 (8), notice is hereby given that the Department of Health and Hospitals, Board of Dentistry intends to amend LAC 46:XXXIII.134, 306, 706, 1505, 1607, 1611, 1613, 1709, and 1711.

The Louisiana State Board of Dentistry is promulgating LAC 46:XXXIII.134 to comply with Act 76 of the 2017 Regular Session of the legislature, which requires the Board to adopt rules to comply with the mandates of the Act, which requires prescribers of opioids to check a patient's records in the Prescription Monitoring Program under certain circumstances.

The changes to LAC 46:XXXIII.306, 706, 1709, and 1711 will provide dentists and hygienists who have failed a licensing exam three times or more a potential avenue to become licensed in Louisiana.

LAC 46:XXXIII.1505 currently provides certain continuing education requirements for the renewal of a sedation permit. The proposed rule changes change the requirements and move those requirements to LAC 46:XXXIII.1611, so this rule is to be repealed.

The changes to LAC 46:XXXIII.1607 relate to the opioid continuing education mandated by Act 76 of the 2017 Regular Session of the legislature. LAC 46:XXXIII.1611 decreases the continuing education requirements for licensure renewal by dentists. The changes also change the continuing education requirements for a sedation permit renewal, which requirements are being moved into this rule from LAC 46:XXXIII.1505, which is being deleted by the proposed changes. These changes also add opioid continuing requirement that is mandated by Act 76 of the 2017 Regular Session of the legislature. Further, the changes to LAC 46:XXXIII.1613 decreases the continuing education requirements for licensure renewal by hygienists.

Title 46
PROFESSIONAL AND OCCUPATIONAL
STANDARDS

Part XXXIII. Dental Health Profession

Chapter 1. General Provisions

§134. Prescription Monitoring Program

A. Pursuant to R.S. 40:973(A), all dentists who have obtained a controlled dangerous substance license issued by the Board of Pharmacy shall automatically be enrolled in the Prescription Monitoring Program established in R.S. 40:1001 et seq.

B. A prescriber or his delegate shall access and review the patient's record in the Prescription Monitoring Program and review the patient's record at least every 90 days if the patient's course of treatment continues for more than 90 days. The requirement established in this Section shall not apply in the following instances:

1. The drug is prescribed or administered to a hospice patient or to any other patient who has been diagnosed as terminally ill.

2. The drug is prescribed or administered for the treatment of cancer-related chronic or intractable pain.

3. The drug is ordered or administered to a patient being treated in a hospital.

4. The Prescription Monitoring Program is inaccessible or not functioning properly due to an internal or external electronic issue. However, the prescriber or his delegate shall check the Prescription Monitoring Program once the electronic accessibility has been restored and note the cause for the delay in the patient's chart.

5. No more than a single seven-day supply of the drug is prescribed or administered to a patient.

C. Failure to comply with this rule shall constitute a violation of R.S. 37:776(A)(6) and or 37:776(A)(24) and may subject the dentist to punishment, penalty, sanction or remediation as provided for in the Dental Practice Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 44:

Chapter 3. Dentists

§306. Requirements of Applicants for Dental Licensure by Credentials

A. - A.2. ...

3. currently possesses a nonrestricted license in another state as defined in R.S. 37:751(A)(2);

4. - 5. ...

6. has not failed any clinical licensure examination a total of three or more times. This number includes the accumulation of all examinations taken regardless of the testing agency. This number excludes failures of clinical examinations taken prior to an applicant's final year of dental school. A make-up examination counts as an examination. This prohibition may be overcome if the applicant meets all of the other requirements of this Rule, including the successful completion of an initial licensure examination that included procedures on a live patient, and:

a. has been actively practicing with an unrestricted dental license for five years in another state as defined in R.S. 37:751(A)(2), has not had any discipline by the dental board in any state, and meets in person with the full board,

and thereafter a majority of the full board votes to overcome this prohibition; or

b. following the last failure of a clinical licensure examination, completes a dental post-doctoral program of a minimum of one year which is accredited by an accreditation agency that is recognized by the United States Department of Education, meets in person with the full board, and thereafter a majority of the full board votes to overcome this prohibition.

A.7. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and R.S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:739 (July 1992), amended LR 21:571 (June 1995), LR 22:23 (January 1996), LR 23:1528 (November 1997), LR 24:1114 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1612 (August 2000), repromulgated LR 27:1893 (November 2001), amended LR 28:1777 (August 2002), LR 30:2305 (October 2004), LR 31:927 (April 2005), LR 32:243 (February 2006), LR 33:846 (May 2007), LR 33:2652 (December 2007), LR 34:2564 (December 2008), repromulgated LR 35:67 (January 2009), amended LR 37:1405 (May 2011), LR 37:3515 (December 2011), repromulgated LR 38:355 (February 2012), amended LR 39:87 (January 2013), LR 44:

Chapter 7. Dental Hygienists

§706. Requirements of Applicants for Licensure by Credentials (Hygienists)

A. - A.2. ...

3. currently possesses a nonrestricted license in another state as defined in R.S. 37:751(A)(2);

4. - 5. ...

6. has not failed any clinical licensure examination a total of three or more times. This number includes the accumulation of all examinations taken regardless of the testing agency. A make-up examination counts as an examination. This prohibition may be overcome if the applicant meets all of the other requirements of this Rule, including the successful completion of an initial licensure examination that included procedures on a live patient, and has been actively practicing with an unrestricted license for 5 years in another state as defined in R.S. 37:751(A)(2), has not had any discipline by any dental board and meets in person with the full board, and thereafter the full board votes with a majority to overcome this prohibition;

A.7. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R. S. 37:760(8) and R. S. 37:768.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 18:737 (July 1992), amended LR 21:570 (June 1995), LR 22:23 (January 1996), LR 24:1117 (June 1998), LR 25:513 (March 1999), LR 26:692 (April 2000), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 28:1778 (August 2002), LR 33:846 (May 2007), LR 33:2652 (December 2007), LR 34:2564 (December 2008), repromulgated LR 35:68 (January 2009), amended LR 39:88 (January 2013), LR 44:

Chapter 15. Anesthesia/Analgesia Administration

§1505. Personal Permit Renewals

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 42:54 (January 2016),

amended by the Department of Health, Board of Dentistry, LR 43:956 (May 2017), repealed LR 44:

Chapter 16. Continuing Education Requirements

§1607. Exemptions

A. Continuing education requirements, other than the three-hour opioid management course listed in §1611.A.3, shall not apply to:

A.1. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 24:1117 (June 1998), LR 26:1613 (August 2000), repromulgated LR 27:1894 (November 2001), amended LR 41:1284 (July 2015), LR 44:

§1611. Continuing Education Requirements for Relicensure of Dentists

A. Unless exempted under §1607, each dentist shall complete a minimum of 30 hours of continuing education during each renewal period for the renewal of his/her license to practice dentistry by taking courses approved as set forth in §1615 in the following amounts:

1. 20 hours of personally attended clinical courses pertaining to the actual delivery of dental services to patients;

2. 10 hours of clinical courses pertaining to the actual delivery of dental services to patients that may be done in person, online or via correspondence; if done online or via correspondence the courses must require the successful completion of a written examination at the conclusion of the course;

3. three of the 30 hours listed in Paragraphs 1 and 2 of this Subsection must include an opioid management course which includes training on drug diversion, best practice prescribing of controlled substances or appropriate treatment for addiction. Successful completion of this three-hour requirement once during a dentist's career shall satisfy this requirement in full. A dentist can become exempt from this requirement by submitting to the board a certification form attesting that he has not prescribed, administered, or dispensed a controlled dangerous substance during the entire renewal period.

B. Continuing education ordered as a result of disciplinary matters shall not serve as credit for mandatory continuing education unless specifically authorized in a consent decree or in an order issued by the board.

C. Past and present dentist members of the Louisiana State Board of Dentistry are allowed four hours of continuing dental education credit for each meeting of the American Association of Dental Examiners attended by said past or present dentist member.

D. No credit will be given for activities directed primarily to persons preparing for licensure in Louisiana. E. Dentists who are on staffs of hospitals accredited by the Joint Commission on Accreditation of Health Care Organizations may receive continuing education credit for those continuing education courses provided by said hospital.

F. Dentists will be awarded three clinical credit hours for successful completion of Cardiopulmonary Resuscitation Course "C", Basic Life Support for Healthcare Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course. When being audited for

compliance with cardiopulmonary resuscitation course completion, a photocopy of the CPR card evidencing successful completion of the course for each year shall be appended to the form.

G.1. Dentists who successfully complete certification courses in advanced cardiac life support continuing education will be awarded up to 16 hours of clinical continuing dental education. However, dentists completing the shorter recertification course in advanced cardiac life support will be awarded 3 hours of clinical continuing dental education.

2. Dentists who successfully complete the certification courses in pediatric advanced cardiac life support continuing education will be awarded up to 14 hours of clinical continuing dental education. However, dentists completing the shorter recertification course in PALS will be awarded 6 hours of clinical continuing dental education.

H. In order to renew permits for the administration of deep sedation or moderate sedation, each licensee shall complete an in person adult sedation course of a minimum of 12 hours pertinent to the level of their sedation permit no less than once every four years. If the permit has a pediatric certification, then the aforementioned 12 hours must address pediatric sedation. If the holder of a permit with a pediatric certification sedates persons above the age of 12 as well as persons below the age of 13, the permit holder must take both the adult and the pediatric sedation courses for a total of 24 in person hours. If the holder of the permit with a pediatric certification sedates only persons below the age of 13, and signs a certification to that effect, then only the 12 hour in person pediatric sedation course is necessary. These hours will count towards the requirement of §1611.A.1. The CPR, ACLS, and PALS courses required in §§1503 and 1504 do not count toward the requirements set forth in this Section. Recertification for deep sedation or general anesthesia as required by the American Association of Oral and Maxillofacial Surgeons every five years shall satisfy this requirement.

I. Dentists successfully completing the calibration training for the administration of the clinical licensing examination administered by the Council of Interstate Testing Agencies (CITA) may be awarded up to 20 hours of clinical continuing education per each renewal period.

J. Louisiana licensed dentists shall be eligible for three hours of clinical continuing education for treating a donated dental service patient (pro bono) from a Louisiana State Board of Dentistry approved agency. The maximum number of hours will be no more than six in any two-year biennial renewal period, and verification of treatment from the agency is mandatory in order to obtain these continuing education credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:569 (June 1995), LR 22:24 (January 1996), LR 22:1216 (December 1996), LR 23:1526 (November 1997), LR 24:1117 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:244 (February 2006), LR 35:1237 (July 2009), LR 36:2038 (September 2010), LR 37:2151 (July 2011), LR 37:3515 (December 2011), repromulgated LR 38:356 (February 2012), amended LR 38:817 (March 2012), LR 38:1959 (August 2012), LR39:1282 (May 2013), by the

§1613. Continuing Education Requirements for Relicensure of Dental Hygienists

A. Unless exempted under §1607, each dental hygienist shall complete a minimum of 20 hours of continuing education during each renewal period for the renewal of his/her license to practice dental hygiene by taking courses approved as set forth in §1615 in the following amounts:

1. 12 hours of personally attended clinical courses pertaining to the actual delivery of dental or dental hygiene services to patients;

2. 8 hours of clinical courses pertaining to the actual delivery of dental or dental hygiene services to patients that may be done in person, online or via correspondence; if done online or via correspondence the courses must require the successful completion of a written examination at the conclusion of the course.

B. Continuing education ordered as a result of disciplinary matters shall not serve as credit for mandatory continuing education unless specifically authorized in a consent decree or in an order issued by the board.

C. Dental hygienists are allowed continuing education credit for courses sponsored and/or approved for dentist's continuing education.

D. Past and present dental hygiene members of the Louisiana State Board of Dentistry are allowed four hours of continuing dental hygiene education credit for each meeting of the American Association of Dental Examiners attended by said past or present dental hygiene member.

E. No credit will be given for activities directed primarily to persons preparing for licensure in Louisiana.

F. Dental hygienists who are on staffs of hospitals accredited by the Joint Commission on Accreditation of Health Care Organizations may receive continuing education credit for those continuing education courses provided by said hospital.

G. Dental hygienists will be awarded three clinical credit hours for successful completion of Cardiopulmonary Resuscitation Course "C," Basic Life Support for Healthcare Providers as defined by the American Heart Association or the Red Cross Professional Rescue Course. When being audited for compliance with cardiopulmonary resuscitation course completion, a photocopy of the CPR card evidencing successful completion of the course for each year shall be appended to the form.

H. Dental hygienists who successfully complete a continuing education course as set forth in §710, Administration of Local Anesthesia for Dental Purposes, will be awarded 72 hours of clinical continuing dental hygiene education. However, these hours may not be carried over to a subsequent renewal period and will count only toward the renewal of their license during the period in which they attended the course.

I. Dental hygienists successfully completing the calibration training for the administration of the clinical licensing examination administered by the Council of Interstate Testing Agencies (CITA) may be awarded up to 12 hours of clinical continuing education per each renewal period.

J. Louisiana licensed dental hygienists shall be eligible for two hours of clinical continuing education for treating a

donated dental service patient (pro bono) from a Louisiana State Board of Dentistry approved agency. The maximum number of hours will be no more than four in any two-year biennial renewal period, and verification of treatment from the agency is mandatory in order to obtain these continuing education credits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(8) and (13).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 20:661 (June 1994), amended LR 21:570 (June 1995), LR 22:24 (January 1996), LR 22:1217 (December 1996), LR 23:1526 (November 1997), LR 24:1118 (June 1998), LR 25:510 (March 1999), LR 26:489 (March 2000), LR 30:2307 (October 2004), LR 32:245 (February 2006), LR 35:1237 (July 2009), LR 36:2039 (September 2010), LR 39:86 (January 2013), LR 44:

**Chapter 17. Licensure Examination
§1709. Examination of Dentists**

A. - E. ...

F. Notwithstanding any other law to the contrary or any examination manual of any of the testing agencies listed in Subsection C of this Section, no candidate for licensure in the state of Louisiana will be granted same if said candidate has failed any clinical licensing examination for a total of three times. This number includes the accumulation of all examinations taken regardless of the testing agency. This number excludes failures of clinical examinations taken prior to an applicant's final year of dental school. A make-up examination counts as an examination. This prohibition may be overcome if the applicant meets all of the other requirements of this Section, including the successful completion of one of the examinations listed on part C of this Section and:

1. has been actively practicing with an unrestricted dental license for five years in another state as defined in R.S. 37:751(A)(2), has not had any discipline by the dental board in any state, and meets in person with the full board, and thereafter a majority of the full board votes to overcome this prohibition; or

2. following the last failure of a clinical licensure examination, completes a dental post-doctoral program of a minimum of one year which is accredited by an accreditation agency that is recognized by the United States Department of Education, meets in person with the full board, and thereafter a majority of the full board votes to overcome this prohibition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:2513 (December 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:3516 (December 2011), repromulgated LR 38:356 (February 2012), amended LR 38:1959 (August 2012), LR 39:86 (January 2013), LR39:1282 (May 2013), LR 40:783 (April 2014), amended by the Board of Dentistry, LR 42:1622 (October 2016), LR 44:

§1711. Examination of Dental Hygienists

A. - E. ...

F. Notwithstanding any other law to the contrary or any examination manual of any of the testing agencies, no candidate for licensure in the state of Louisiana will be granted same if said candidate has failed any clinical licensing examination for a total of three times. This number includes the accumulation of all examinations taken

regardless of the testing agency. A make-up examination counts as an examination. This prohibition may be overcome if the applicant meets all of the other requirements of this Rule, including the successful completion of an initial licensure examination that included procedures on a live patient, has been actively practicing with an unrestricted license for five years in another state as defined in R.S. 37:751.A.2 and meets in person with the full board, and thereafter the full board votes with a majority to overcome this prohibition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:760(1) and (8).

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Board of Dentistry, LR 24:1119 (June 1998), amended LR 28:1779 (August 2002), LR 33:2654 (December 2007), LR 37:1407 (May 2011), LR 37:2151 (July 2011), LR 37:3516 (December 2011), repromulgated LR 38:356 (February 2012), amended LR 38:1960 (August 2012), amended by the Department of Health, Board of Dentistry, LR 42:1662 (October 2016), LR 44:

Family Impact Statement

There will be no family impact in regard to issues set forth in R.S. 49:972.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973. In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;
2. the effect on early childhood development and preschool through postsecondary education development;
3. the effect on employment and workforce development;
4. the effect on taxes and tax credits;
5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

The proposed rulemaking should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect of the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comment

Interested persons may submit written comments on these proposed Rule changes to Arthur Hickham, Jr., Executive Director, Louisiana State Board of Dentistry, One Canal Place, Suite 2680, 365 Canal Street, New Orleans, LA, 70130. Written comments must be submitted to and received by the board within 20 days of the date of the publication of this notice. A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be made in writing and received by the board within 20 days of the date of the publication of this notice.

Public Hearing

A request pursuant to R.S. 49:953 (A)(2) for oral presentation, argument, or public hearing must be in writing

and received by the board within 20 days of the date of the publication of this notice.

Arthur Hickham, Jr.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Fees and Costs; Anesthesia/Analgesia Administration; Continuing Education Requirements

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes have a one-time publication cost for the Board of Dentistry for publishing the rule amendments in the LA State Register totaling approximately \$500 in FY 18. There are no additional implementation costs or savings for state or local governmental units as a result of the proposed rules changes.

The proposed rule changes add new rules regarding the prescription of opioids, the monitoring of patients receiving the aforementioned subscriptions through LA's Prescription Monitoring Program, and the addition of required continuing education courses regarding opioids for dentists pursuant to Act 76 of the 2017 Regular Session (Act 76 of 2017); amend rules associated with potential licensing of dentists and hygienists who have failed a licensing exam three or more times to become licensed in Louisiana; and amend continuing education requirements for dentists and dental hygienists in Louisiana.

Provisions associated with the Prescription Monitoring Program (PMP) do not carry an additional cost for the LA Board of Pharmacy, as medical professionals holding Controlled Dangerous Substance licenses must pay a fee of up to \$25 annually for use of the PMP upon license renewal to fund the PMP's operations.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will affect revenue collections for the Board of Dentistry to the extent dentists fail to comply with the new rules regarding the Prescription Monitoring Program and the board levies fines against the offending parties. The extent to which this may occur, as well as the accompanying revenue, is unknown. For reference, the board may issue fines ranging from \$500 to \$5,000. Additionally, the proposed rule changes may increase revenue collections for the Board of Dentistry to the extent additional hygienists and dentists become licensed through alternative means included in the proposed rules. Because the number of hygienists and dentists that may become licensed through alternative means is unknown, the potential revenue increase is indeterminable. For reference, application fees for a dental hygienist license and a dental license total \$1,650.

Furthermore, medical professionals enrolling in the Prescription Monitoring Program (PMP) must pay a fee of up to \$25 annually for use of the PMP upon renewal of their Controlled Dangerous Substance licenses. This is an existing fee and the proposed rule changes only require the monitoring of patients prescribed opioids in certain circumstances.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Dentists prescribing opioids to patients will have a marginal workload increase associated with the proposed rule changes, as Act 76 of 2017 requires dentists holding controlled dangerous substance licenses to review a patient's record in the Prescription Monitoring Program every 90 days in the event the

course of opioid treatment lasts for 90 days or more, unless certain circumstances apply. In the event a dentist fails to monitor as outlined in the proposed rule changes, they are subject to punishment, penalty, sanction, or remediation as provided for in the Dental Practice Act.

Dentists and dental hygienists may realize reduced expenses as a result of reduced continuing education requirements. The proposed rule changes alter annual continuing education (CE) requirements for dentists and dental hygienists. CE for dentists is reduced by 10 hours, from 40 hours annually to 30 hours annually, and must consist entirely of clinical service courses. Under the current rules, dentists may take 20 hours of clinical service CE and 20 hours of more general CE. Furthermore, the proposed rule changes add a requirement that dentists take a 3-hour course on opioid management at least once during their career. Lastly, the proposed rule changes state that dentists holding permits for adult and/or pediatric sedation must complete a 12-hour CE course in order to renew their permits, *e.g.* if a dentist holds both permits, they must take 24 hours of CE regarding clinical and pediatric sedation to qualify for permit renewal. These CE hours will count toward the 30-hour requirement.

The proposed rule changes reduce CE requirements for dental hygienists by 4 hours, from 24 hours to 20 hours. However, all hours must consist entirely of clinical service courses.

The proposed rule changes allow dentists and dental hygienists who have failed a licensure examination three or more times the ability to become licensed in Louisiana through alternative means. Dentists and hygienists must have initially passed a licensure examination, been actively practicing using an unrestricted dental license for 5 or more years in another state, not faced discipline from dental boards in any state, and receives approval from a majority of the LA Board of Dentistry after meeting with the full board in person. In lieu of the aforementioned requirements for dentists, dentists completing an accredited dental post-doctoral program lasting at least one year or more may gain licensure after meeting with the full LA Board of Dentistry and receiving approval from a majority of the members.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will impact competition and employment to the extent the new alternative means of licensure allow for more dentists and dental hygienists to practice in Louisiana. The amount of new dentists and hygienists that may receive licensure is unknown, therefore the effect on competition and employment is indeterminable.

Arthur Hickham, Jr.
Executive Director
1710#030

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Medical Examiners

Mandatory Access and Review of Prescription Monitoring Program Data (LAC 46:XLV.Chapter 69)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et seq., and pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1270, the Louisiana Podiatry Practice Act, R.S. 37:611-37:628, the Louisiana Physician Assistant Practice Act, R.S. 37:1360.23, and the uniform controlled

dangerous substances law, R.S. 40:978, as amended by Act 76 of the 2017 Regular Session of the Louisiana Legislature, the Louisiana State Board of Medical Examiners (board) intends to adopt rules requiring mandatory access and review of prescription monitoring program data prior to initially prescribing any opioid to a patient and at intervals of at least every 90 days if opioids are prescribed for more than 90 days. The proposed Rule is applicable to individuals licensed by the board whose scope of practice includes the authority to prescribe opioids *e.g.*, physicians, podiatrists and physician assistants. The proposed Rule will also provide applicable definitions, specify certain exceptions provided by law and provide for non-compliance.

Title 46

PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 69. Prescription, Dispensation, and Administration of Medications

Subchapter C. Mandatory Access and Review of Prescription Monitoring Program Data

§6931. Scope of Subchapter

A. The rules of this Subchapter provide for prescriber mandatory access and review of the Louisiana Prescription Monitoring Program, R.S. 40:1001 et seq., as from time-to-time may be amended (PMP), and for exceptions and non-compliance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:611-37:628, 37:1360.23, and 40:978.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§6933. Definitions

A. As used in this Subchapter, the following terms and phrases shall have the meanings specified.

Administer—with respect to a medication provided or dispensed by a prescriber for use by a patient, the term *administer* means directly or through an agent to give, provide, or supply for immediate oral ingestion, insertion, or topical application by the patient, or to insert, apply topically, or inject intravenously, intramuscularly, subcutaneously, intrathecally, or extrathecally.

Board—the Louisiana State Board of Medical Examiners, as constituted under R.S. 37:1263.

Controlled Dangerous Substance—any substance defined, enumerated or included in federal or state statute or regulations 21 CFR §§1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations and statute.

Delegate—an individual authorized by a prescriber or dispenser who is also authorized to access and retrieve prescription monitoring program data for the purpose of assisting the prescriber or dispenser, and for whose actions the authorizing prescriber or dispenser retains accountability.

Prescribe—to issue a request or order for a drug or medical device by an individual licensed under this Part for a legitimate medical purpose. The act of prescribing must be in good faith and in the usual course of the licensee's professional practice.

Prescriber—a physician, podiatrist, physician assistant, and any other category of health care provider as may

hereafter be licensed by the board under this Part, whose scope of practice includes authority to prescribe opioids.

Prescription—an order from a practitioner authorized by law to prescribe for a drug or device that is patient specific and is communicated by any means to a pharmacist in a permitted pharmacy.

Prescription Monitoring Program or **PMP**—the electronic system for the monitoring of controlled substances and other drugs of concern established by the Prescription Monitoring Program Act, R.S. 40:1001 et seq., as may from time-to-time be amended.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:611-37:628, 37:1360.23, and 40:978.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§6935. Mandatory Access and Review of Prescription Monitoring Program Data; Exceptions

A. Prior to initially prescribing any opioid to a patient, a prescriber or his/her delegate shall access and review the patient's record in the PMP; and

B. If opioids are prescribed to the patient for more than 90 days, the prescriber or his/her delegate shall access and review the record in the PMP at least every 90 days.

C. This Section shall not apply if:

1. the drug is prescribed or administered to a hospice patient or any other patient who has been diagnosed as terminally ill;

2. the drug is prescribed or administered for the treatment of cancer-related chronic or intractable pain;

3. the drug is ordered or administered to a patient being treated in a hospital;

4. the PMP is not accessible or not functioning properly due to an electronic issue. However, the prescriber shall check the PMP after electronic accessibility has been restored and note the cause for the delay in the patient's chart; or

5. no more than a single seven-day supply of the drug is prescribed or administered to a patient.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:611-37:628, 37:1360.23, and 40:978.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§6937. Effect of Non-Compliance

A. For non-compliance with any of the provisions of this Subchapter the board may suspend, revoke, refuse to issue or impose probationary or other terms, conditions and restrictions on any license to practice in the state of Louisiana, or any registration issued under this Part, held or applied for by:

1. a physician culpable of such violation under R.S. 37:1285(A);

2. a podiatrist culpable of such violation under R.S. 37:624(A); and

3. a physician assistant culpable of such violation under R.S. 37:1360.33.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270, 37:611-37:628, 37:1360.23, and 40:978.

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed Rule on the family has been considered. It is not anticipated

that the proposed Rule will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed rules on those that may be living at or below one hundred percent of the federal poverty line has been considered. It is not anticipated that the proposed rules will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed rules on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed Rule will have any impact on the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed rules to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., November 20, 2017.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on Monday, November 27, 2017 at 10 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Vincent A. Culotta, Jr., M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Mandatory Access and Review of Prescription Monitoring Program Data

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules will not result in additional expenditures for state or local governmental units. The LA State Board of Medical Examiners anticipates devoting existing resources and personnel to processing information or reports concerning non-compliance with the proposed rules

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will not affect revenue collections for state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules will likely result in an indeterminable, but marginal workload increase for physicians and other health

care professionals licensed by the Board whose scope of practice includes the authority to prescribe opioids e.g., podiatrists and physician assistants. The proposed rules are being promulgated in accordance with Act 76 of the 2017 Regular Session, which requires physicians and other authorized providers to access and review a patient's record in the Louisiana Prescription Monitoring Program (PMP), either individually or through a delegate, prior to initially prescribing any opioid to a patient. If opioids are prescribed for more than 90 days, the proposed rules further provide that the prescriber or his delegate shall access and review the patient's PMP record at least every 90 days. Exceptions to the need to access the PMP, which are authorized by Act 76, are incorporated into the proposed rules, which also provide that non-compliance may serve as a basis for enforcement action by the Board. The impact of the proposed rules is indeterminable because there is no information or data available concerning the number of physicians, podiatrists or physician assistants who prescribe opioids or the number that do so in a manner outside of the proposed exceptions. Furthermore, there is no data or information regarding the amount of time or associated costs related to accessing, reviewing, and reacting to PMP data. However, the proposed rules may benefit the public generally to the extent that enhanced access and review of PMP data may reduce diversion and inappropriate prescribing which, in turn, may decrease patient mortality associated with the misuse of opioids and healthcare costs related to the treatment and care of overuse and addiction.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.

Vincent A. Culotta, Jr., M.D.
Executive Director
1710#073

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Board of Medical Examiners

Physician Practice; Physician Collaboration with Advanced Practice Registered Nurses (LAC 46:XLV.Chapter 79)

Notice is hereby given that in accordance with the Louisiana Administrative Procedure Act, R.S. 49:950 et. seq., and pursuant to the authority of the Louisiana Medical Practice Act, R.S. 37:1270, the Louisiana State Board of Medical Examiners (board) intends to adopt rules to facilitate physician collaboration with advanced practice registered nurses (APRNs), LAC 46:XLV.7901 et seq. The proposed rules provide for: the scope of the Subchapter (§7901); applicable terms and definitions (§7903); a prohibition against collaboration other than in compliance with the rules (§7905); exceptions (§7907); due diligence (§7909); eligibility and required components of a collaborative practice agreement (§7911); required information (§7913); collaborating physician responsibilities and compensation arrangements (§7915); limitations (§7917); continuous quality improvement and Board access to documents (§7919); and the effect of violations (§7921). The proposed Rule is set forth below

Title 46 PROFESSIONAL AND OCCUPATIONAL STANDARDS

Part XLV. Medical Professions

Subpart 3. Practice

Chapter 79. Physician Collaboration with Advanced Practice Registered Nurses

Subchapter A. General Provisions

§7901. Scope

A. The rules of this Chapter govern the practice of physicians in this state who engage in collaborative practice with an advanced practice registered nurse who provides acts of medical diagnosis or prescriptions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§7903. Definitions

A. As used in this Chapter, the following terms shall have the meanings specified.

Act—the Louisiana Medical Practice Act or Act, R.S. 37:1261 et seq.

Advanced Practice Registered Nurse or *APRN*—a licensed registered nurse who is licensed as an advanced practice registered nurse by the Louisiana State Board of Nursing.

Alternate Collaborating Physician or *ACP*—a physician meeting the eligibility requirements of this Chapter who is designated to serve as collaborating physician, in accordance with §7911.A.5 of these rules, when the collaborating physician is unavailable.

Board—the Louisiana State Board of Medical Examiners, as constituted in the Louisiana Medical Practice Act.

Clinical Practice Guidelines—written or electronic documents, jointly agreed upon by the collaborating physician and APRN that describe a specific plan, arrangement, or sequence of orders, steps, or procedures to be followed or carried out in providing patient care in various clinical situations. These may include textbooks, reference manuals, electronic communications and Internet sources.

Collaborating Physician or *CP*—a physician with whom an APRN has been approved to collaborate by the Louisiana State Board of Nursing, who is actively engaged in clinical practice and the provision of direct patient care in Louisiana, with whom an APRN has developed and signed a collaborative practice agreement for prescriptive and distributing authority. A CP shall hold a current, medical license issued by the board, or be otherwise authorized by federal law or regulation to practice medicine in this state, have no pending disciplinary proceedings and practice in accordance with rules of the board.

Collaboration or *Collaborate*—a cooperative working relationship between a physician and APRN to jointly contribute to providing patient care and may include but not be limited to discussion of a patient's diagnosis and cooperation in the management and delivery of health care with each provider performing those activities that he or she is legally authorized to perform.

Collaborative Practice—the joint management of the health care of a patient by an APRN performing advanced practice registered nursing and one or more consulting physicians. Except as provided in R.S. 37:930, acts of medical diagnosis and prescriptions by an APRN shall be in accordance with a collaborative practice agreement.

Collaborative Practice Agreement or *CPA*—a formal written statement addressing the parameters of the collaborative practice which are mutually agreed upon by an APRN and one or more physicians which shall include but not be limited to the following provisions:

- a. availability of the collaborating physician for consultation or referral, or both;
- b. methods of management of the collaborative practice which shall include clinical practice guidelines; and
- c. coverage of the health care needs of a patient during any absence of the APRN or physician.

Controlled Substance—any substance defined, enumerated, or included in federal or state statute or regulations 21 CFR 1308.11-15 or R.S. 40:964, or any substance which may hereafter be designated as a controlled substance by amendment or supplementation of such regulations or statute.

Fair Market Value or *FMV*—the value in arm's-length transactions, consistent with the general market value of the services provided.

LSBN—the Louisiana State Board of Nursing, as constituted in R.S. 37:911 et seq.

Physician—an individual lawfully entitled to engage in the practice of medicine in this state as evidenced by a license duly issued by the board.

Practice Site or *Site*—a location identified in a CPA or other documentation submitted by the APRN to the LSBN at which a CP or APRN engage in collaborative practice. A hospital and its clinics, ambulatory surgery center, nursing home, any facility or office licensed and regulated by LDH, as well as a group or solo physician practice, which have more than one physical location shall be considered a *site* for purposes of this definition.

Prescription or *Prescription Drug Order*—an order from a practitioner authorized by law to prescribe for a drug or device that is patient specific and is communicated by any means to a pharmacist in a permitted pharmacy, and is preserved on file as required by law or regulation.

Unpredictable, Involuntary Reasons—the death, disability, disappearance, unplanned relocation, or a similar unpredictable or involuntary reason.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§7905. Prohibitions

A. A physician who has signed a CPA with an APRN shall comply with the rules of this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§7907. Exceptions

A. This Chapter shall not apply to physician collaboration:

1. with an APRN who does not engage in acts of medical diagnosis or prescriptions, as described in R.S.

37:913(8) and (9), or those otherwise exempt from collaborative practice pursuant to R.S. 37:930; and

2. in cases of a declared emergency or disaster, as defined by the Louisiana Health Emergency Powers Act, R.S. 29:760 et seq., or as otherwise provided in title 29 of the *Revised Statutes* of 1950, or the board's rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

Subchapter B. Due Diligence; Eligibility; Requirements of Collaborative Practice Agreement and Required Information

§7909. Due Diligence

A. Before entering into a collaborative practice agreement with an APRN, a physician shall:

1. insure that he or she possesses the qualifications specified by this Chapter; and
2. have an understanding of the rules of this Chapter.

B. After signing a collaborative practice agreement with an APRN a physician shall confirm with the APRN that any required documentation concerning the collaborative practice has been submitted to the LSBN.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§7911. Eligibility; Required Components of Collaborative Practice Agreement

A. To be eligible to engage in collaborative practice with an APRN a physician shall:

1. be actively engaged in the provision of direct patient care in Louisiana;
2. practice in an area comparable in scope, specialty, or expertise to that of the APRN;
3. except as provided in §7911.A.5, have signed a collaborative practice agreement as described in R.S. 37:913(8) and (9) with an APRN that complies with the standards of practice prescribed by §§7915-7919 of this Chapter. In addition, a collaborating physician shall insure that the CPA includes:

a. a plan of accountability among the parties that addresses:

- i. prescriptive authority of the APRN and the responsibilities of the collaborating physician;
- ii. a plan for hospital and other healthcare institution admissions and privileges which provides that a collaborating physician must have hospital privileges at an institution before an APRN receives privileges at the same hospital or institution;
- iii. arrangements for diagnostic and laboratory testing; and

iv. a plan for documentation of medical records;

b. clinical practice guidelines as required by R.S. 37:913(9)(b), documenting the types or categories or schedules of drugs available and generic substitution for prescription by the APRN and be:

- i. mutually agreed upon by the APRN and collaborating physician;
- ii. specific to the practice setting;
- iii. maintained on site;
- iv. reviewed and signed at least annually by the CP to reflect current practice;

c. availability of the collaborating physician when he or she is not physically present in the practice setting for consultation, assistance with medical emergencies, or patient referral;

d. confirming that in the event all collaborating physicians are unavailable, and there is no alternate collaborating physician(s), the APRN will not medically diagnose or prescribe;

e. documentation that patients are informed about how to access care when both the APRN and/or the collaborating physician are absent from the practice setting;

f. an acknowledgment of the mutual obligation and responsibility of the APRN and collaborating physician to insure that all acts of prescriptive authority are properly documented;

4. if the APRN has been granted prescriptive authority by the Louisiana State Board of Nursing that includes controlled substances; possess a current, unrestricted Louisiana controlled dangerous substance permit and a current, unrestricted registration to prescribe controlled substances issued by the United States Drug Enforcement Administration; and

5. in the event all CPs at a practice site are unavailable, the CP may designate an alternate collaborating physician at the practice site to be available for consultation and collaboration provided the following conditions are met:

a. there is a formal, documented, approved and enforceable organizational policy that allows and provides for designation of an alternate collaborating physician;

b. the organizational policy establishes and provides for documenting such designation and such documentation shall be made available to board representatives when requested, including the dates of the designation and name of the alternate collaborating physician(s);

c. the alternate collaborating physician agrees to the provisions of the collaborative practice agreement previously signed by the collaborating physician(s);

d. the collaborating physician and APRN are responsible for insuring that the documented organization policy is established and that such policy and any ACP meet the requirements of this Chapter; and

e. the ACP is designated to collaborate with the APRN only at the same practice site as the designating CP.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§7913. Required Information

A. Each physician shall report to the board annually, as a condition to the issuance or renewal of medical licensure, whether or not he or she is engaged in collaborative practice with an APRN, along with such other information as the board may request.

B. The information required by this Section shall be reported in a format prepared by the board, which shall be made part of or accompany each physician's renewal application for medical licensure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

Subchapter C. Standards of Practice

§7915. Responsibilities, Compensation Arrangements

A. A collaborating physician shall insure that the identity, contact information and availability of the collaborating physician(s) and APRN are available to patients of the collaborative practice.

B. When serving as the sole CP for an APRN at a practice site, the CP:

1. shall give no less than 30-days notice to the APRN when ending a collaborative practice agreement for predictable, voluntary reasons in order to provide for continuity of care of patients; and

2. work with the APRN to identify and enlist a physician to serve as alternate collaborating physician for unpredictable, involuntary reasons. A physician serving as alternate collaborating physician for unpredictable or involuntary reasons:

a. shall insure that the APRN notifies the LSBN within two business days of the commencement of service as an ACP;

b. may serve in such capacity for at least 30, but no more than 120, days to provide for continuity of care while the APRN secures another CP; and

c. may be excused from the requirements §7911.A.2 (e.g., practice in an area comparable in scope, specialty, or expertise of the APRN, unless following notification pursuant to §7915.B.2.a of this Section, the APRN advises the ACP that the collaborative practice has not been approved by LSBN).

C. In structuring any compensation arrangement or other financial relationship with an APRN, a collaborating physician shall be mindful that a CPA is not an option for an APRN; rather, it is a requirement of state law. Any attempt to exploit such requirement by way of compensation arrangements for performing no professional services, merely serving as a CP under a CPA, or for an amount that is not consistent with the FMV of the services provided to an APRN under a CPA shall be viewed as unprofessional conduct.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§7917. Limitations

A. A physician shall not collaborate with an APRN:

1. except in compliance with all applicable state and federal laws and regulations;

2. when the APRN and collaborating physician, or in the physician's absence an alternate collaborating physician, do not have the capability to be in contact with each other face-to-face, by telephone or other means of direct telecommunication;

3. who treats and/or utilizes controlled substances in the treatment of:

a. non-cancer-related chronic or intractable pain, as set forth in §§6915-6923 of the board's rules;

b. obesity, as set forth in §§6901-6913 of the board's rules;

c. one's self, spouse, child or any other family member; or

4. who distributes medication, other than free or gratuitous non-controlled substances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

§7919. Continuous Quality Improvement; Board Access to Documents

A. A collaborating physician shall insure that copies of the collaborative practice agreement, clinical practice guidelines, organization policy and required designation documentation for an alternate collaborating physician are available at the practice site for examination, inspection and copying upon request by the board or its designated employees or agents.

B. A collaborating physician or alternate collaborating physician shall comply with and respond to requests by the board for personal appearances and information relative to his or her collaborative practice;

C. Employees or agents of the board may perform an on-site review of a collaborating physician or alternate collaborating physician's practice at any reasonable time, without the necessity of prior notice, to determine compliance with the requirements of these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

Subchapter D. Sanctions

§7921. Effect of Violation

A. Any violation or failure to comply with the provisions of this Chapter shall be deemed unprofessional conduct and conduct in contravention of the board's rules, in violation of R.S. 37:1285(A)(13) and (30), respectively, as well as violation of any other applicable provision of R.S. 37:1285(A).

AUTHORITY NOTE: Promulgated in accordance with R.S. 37:1270(B)(6).

HISTORICAL NOTE: Promulgated by the Department of Health, Board of Medical Examiners, LR 44:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of the proposed Rule on the family has been considered. It is not anticipated that the proposed Rule will have any impact on family, formation, stability or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the impact of the proposed Rule on those that may be living at or below 100 percent of the federal poverty line has been considered. It is not anticipated that the proposed rules will have any impact on child, individual or family poverty in relation to individual or community asset development, as described in R.S. 49:973.

Provider Impact Statement

In compliance with HCR 170 of the 2014 Regular Session of the Louisiana Legislature, the impact of the proposed Rule on organizations that provide services for individuals with developmental disabilities has been considered. It is not anticipated that the proposed Rule will have any impact on

the staffing, costs or overall ability of such organizations to provide the same level of services, as described in HCR 170.

Public Comments

Interested persons may submit written data, views, arguments, information or comments on the proposed rules to Rita Arceneaux, Confidential Executive Assistant, Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130, (504) 568-6820, Ex. 242. She is responsible for responding to inquiries. Written comments will be accepted until 4 p.m., November 20, 2017.

Public Hearing

A request pursuant to R.S. 49:953(A)(2) for a public hearing must be made in writing and received by the board within 20 days of the date of this notice. If a public hearing is requested to provide data, views, arguments, information or comments orally in accordance with the Louisiana Administrative Procedure Act, the hearing will be held on Monday, November 27, 2017 at 9 a.m. at the office of the Louisiana State Board of Medical Examiners, 630 Camp Street, New Orleans, LA 70130. Any person wishing to attend should call to confirm that a hearing is being held.

Vincent A. Culotta, Jr., M.D.
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Physician Practice; Physician Collaboration with Advanced Practice Registered Nurses

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules will result in a one-time publication cost of \$1,016 in FY 18 for the LA State Board of Medical Examiners. Other than the cost of publication, the proposed rules will not result in any additional costs or savings to the Board or other state or local governmental units. Under the proposed rules, physicians will annually report if they are engaged in a collaborative practice with an advanced practice registered nurse (APRN). The Board anticipates devoting nominal administrative resources to processing that portion of its annual renewal applications for physicians who serve as a collaborating physician (CP) for an APRN. While the number of CPs is unknown, because the information will be included in and processed with existing systems for annual medical license renewals, the Board believes it can absorb any increases in administrative workload with existing personnel and resources.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules will impact physicians who are or wish to serve as a collaborating physician (CP) for an APRN. These rules are complementary to regulations developed by the Louisiana State Board of Nursing governing APRNs. This set of proposed rules accommodates CPs who wish to provide for continuity of care during absences from the practice site, and expand the existing pool of physicians eligible to serve as a CP.

CPs and the patients served by collaborative practice between CPs and APRNs would be favorably impacted by the proposed rules. The proposed rules provide that a CP may designate an alternate collaborating physician (ACP) to serve

as CP when all CPs at a practice site are unavailable. The eligibility requirements also make it clear that physicians with a medical license on probationary terms and conditions, which do not restrict the ability to collaborate with an APRN, would be eligible to serve as a CP. Under current practices, these opportunities are unavailable to CPs.

The proposed rules also place certain administrative obligations on collaborating physicians to: insure eligibility to serve as a CP, have an understanding of the applicable law/rules governing such practice and confirm with the APRN that any required documentation concerning collaborative practice has been submitted to the Board of Nursing; report the fact that he or she is engaged in a collaborative practice with an APRN to the Board annually as part of their medical license renewal process; when serving as a sole CP at a practice site, provide no less than thirty days' notice to an APRN when ending a collaborative practice agreement for predictable, voluntary reasons, and work with an APRN to identify and enlist a physician to serve as an ACP in the event of involuntary or unpredictable reasons e.g., death, disability or unplanned absence.

Finally, the proposed rules also prohibit compensation arrangements for performing no professional services and merely serving as a CP, or for an amount that is not consistent with the fair market value of the services provided to an APRN. While it is not possible to estimate the degree of the impact the proposed rules will have, there is no anticipated material effect on the costs, workload, paperwork, receipts or income of affected physicians.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.

Vincent A. Culotta, Jr., M.D.
Executive Director
1710#045

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Home Health Program Home Health Encounters and Services (LAC 50:XIII.Chapters 1-5)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XIII.Chapters 1-5 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

In compliance with Act 299 of the 2011 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing amended the provisions governing home health services in order to adopt provisions establishing mandatory cost reporting requirements for providers of home health services (*Louisiana Register*, Volume 39, Number 3). The department now proposes to amend the provisions governing home health services in order to comply with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) regulations requiring face-to-face encounters, to clarify the provisions governing home health

services settings, and to remove the visit limit for adult recipients in order to align services with those received by the Medicaid expansion population.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XIII. Home Health Program

Subpart 1. Home Health Services

Chapter 1. General Provisions

§101. Definitions

[Formerly LAC 50:XIX.101]

A. The following words and terms, when used in this Subpart 1, shall have the following meanings, unless the context clearly indicates otherwise:

* * *

Home Health Services—patient care services provided in the patient's residential setting or any setting in which normal life activities take place under the order of a physician that are necessary for the diagnosis and treatment of the patient's illness or injury, including one or more of the following services:

a. - e. ...

f. medical supplies, equipment and appliances suitable for use in any setting in which normal life activities take place.

NOTE: Medical supplies, equipment and appliances for home health are reimbursed through the Durable Medical Equipment Program and must be prior authorized.

Occupational Therapy Services—medically prescribed treatment to improve, maintain or restore a function which has been impaired by illness or injury or, when the function has been permanently lost or reduced by illness or injury, to improve the individual's ability to perform those tasks required for independent functioning

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

§103. Requirements for Home Health Services

[Formerly LAC 50:XIX.103]

A. Home health services shall be based on an expectation that the care and services are medically reasonable and appropriate for the treatment of an illness or injury, and that the services can be performed adequately by the agency in the recipient's residential setting or any setting in which normal life activities take place. For initial ordering of home health services, the physician or authorized non-physician provider (NPP) must document a face-to-face encounter that is related to the primary reason the recipient requires home health services. This face-to-face encounter must occur no more than 90 days before or 30 days after the start of services. For the initial ordering of medical supplies, equipment and appliances, the physician must document that a face-to-face encounter that is related to the primary reason the recipient requires medical equipment occurred no more than six months prior to the start of services. A written plan of care for services shall be evaluated and signed by the physician every 60 days. This plan of care shall be maintained in the recipient's medical records by the home health agency.

B. Home Health services shall be provided in the recipient's residential setting or any setting in which normal life activities take place, other than a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities or any setting in which payment is, or could be, made under Medicaid for inpatient services that include room and board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Chapter 3. Medical Necessity

§301. General Provisions

[Formerly LAC 50:XIX.301]

A. - A.5.f. ...

B. Home health skilled nursing and aide services are considered medically reasonable and appropriate when the recipient's medical condition and medical records accurately justify the medical necessity for services to be provided in their residential setting or any setting in which normal life activities take place, other than a hospital, nursing facility, intermediate care facility for individuals with intellectual disabilities or any setting in which payment is, or could be made, under Medicaid for inpatient services that include room and board rather than in a physician's office, clinic, or other outpatient setting according to guidelines as stated in this Subpart.

C. - D.3. ...

E. Home health services will be authorized upon medical necessity determination based on the state's medical necessity criteria pursuant to LAC 50:I.1101.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:431 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

§303. Provisions for Infants and Toddlers

[Formerly LAC 50:XIX.303]

A. - C.2. ...

3. failure or lack of cooperation by the child's legal guardian(s) to obtain the required medical services in an outpatient setting.

NOTE: The fact that an infant or toddler cannot ambulate or travel without assistance from another is not a factor in determining medical necessity for services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:432 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

§305. Extended Nursing Services for Ages 0-21

A. Extended nursing services may be provided to a Medicaid recipient who is age birth through 21 when it is determined to be medically necessary for the recipient to receive a minimum of three continuous hours per day of nursing services. Medical necessity for extended nursing services exists when the recipient has a medically complex condition characterized by multiple, significant medical

problems that require nursing care as defined by the Louisiana Nurse Practice Act.

B. - C. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 32:406 (March 2006), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Chapter 5. Retrospective Review

§501. Home Health Visits

[Formerly LAC 50:XIX.501]

A. Home health services provided to recipients are subject to post-payment review in order to determine if the recipient's condition warrants high utilization.

B. - C. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:432 (March 2004), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 by assuring that Medicaid recipients receive needed home health services in an efficient and cost-effective manner.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973 by allowing working family members to maintain stable employment due to the improved delivery of home health services which may reduce the financial burden on families.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for

responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Home Health Program Home Health Encounters and Services

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in net estimated state general fund costs of approximately \$2,053 for FY 17-18, \$3,874 for FY 18-19 and \$3,990 for FY 19-20. It is anticipated that \$1080 (\$540 SGF and \$540 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19 and FY 19-20.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$3,155 for FY 17-18 \$6,956 for FY 18-19 and \$7,165 for FY 18-19. It is anticipated that \$540 will be expended in FY 17-18 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing home health services in order to comply with U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) regulations requiring face-to-face encounters, to clarify the provisions governing home health services settings, and to remove the visit limit for adult recipients in order to align services with those received by the Medicaid expansion population. This proposed Rule may be beneficial to recipients due to the removal of the limit for home health services rendered to adults who may be in need of increased visits. Providers of home health services may also benefit from the removal of the limitation on the number of visits payable by the Medicaid Program. It is anticipated that implementation of this proposed rule will increase programmatic expenditures in the Medicaid program by approximately \$4,128 for FY 17-18, \$10,830 for FY 18-19 and \$11,155 for FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1710#052

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Inpatient Hospital Services
Office of Public Health Newborn Screening Payments
(LAC 50:V.115)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:V.115 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing provides reimbursement through the Medical Assistance Program to the Office of Public Health (OPH) for laboratory services rendered in an acute care inpatient hospital setting in compliance with the requirements of Act 840 of the 1997 Regular Session of the Louisiana Legislature.

The department promulgated an Emergency Rule which amended the provisions governing inpatient hospital services in order to establish Medicaid reimbursement to OPH for newborn screenings provided in an acute care inpatient hospital setting, and to ensure that these provisions are promulgated in a clear and concise manner in the *Louisiana Administrative Code (Louisiana Register, Volume 43, Number 8)*. The department subsequently promulgated an Emergency Rule which amended the provisions of the August 5, 2017 Emergency Rule in order to clarify the legislatively mandated requirements for OPH newborn screenings governed by these provisions (*Louisiana Register, Volume 43, Number 10*). This proposed Rule is being promulgated to continue the provisions of the August 5, 2017 and October 20, 2017 Emergency Rules.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part V. Hospital Services

Subpart 1. Inpatient Hospitals Services

Chapter 1. General Provisions

§115. Office of Public Health Newborn Screenings

A. The Department of Health, Bureau of Health Services Financing shall provide reimbursement to the Office of Public Health (OPH) through the Medical Assistance Program for newborn screenings performed by OPH on specimens taken from children in acute care hospital settings.

B. Reimbursement

1. Effective for dates of service on or after August 5, 2017, claims submitted by OPH to the Medicaid Program for the provision of legislatively-mandated inpatient hospital newborn screenings shall be reimbursed outside of the acute hospital per diem rate for the inpatient stay.

a. The hospital shall not include any costs related to newborn screening services provided and billed by OPH in its Medicaid cost report(s).

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Inpatient Hospital Services Office of Public Health Newborn Screening Payments

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 17-18. It is anticipated that \$216 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the August 5, 2017 and October 20, 2017 Emergency Rules which amended the provisions governing inpatient hospital services in order to establish in the Louisiana Administrative Code (LAC) the Medicaid reimbursement methodology that is used to make payments to the Office of Public Health for legislatively mandated newborn screenings provided in an acute care inpatient hospital setting. This action will align the department's rule provisions with current operational procedures. Since these expenditures are already included in the payments made to the managed care organizations, it is anticipated that implementation of this proposed rule will not have a fiscal impact to the Medicaid Program for FY 17-18, FY 18-19 and FY 19-20. The proposed rule will not have an economic impact to providers, but may be beneficial since the rule will establish and authorize the payment authority in the LAC.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1710#053

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Intermediate Care Facilities for Persons with
Intellectual Disabilities—Public Facilities
Transitional Rate Extension
(LAC 50:VII.32969)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:VII.32969 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the

provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health and Hospitals, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for public intermediate care facilities for persons with developmental disabilities (ICFs/DD), hereafter referred to as intermediate care facilities for persons with intellectual disabilities (ICFs/ID), to establish a transitional Medicaid reimbursement rate for community homes that are being privatized (*Louisiana Register*, Volume 40, Number 12).

The department published an Emergency Rule which amended the provisions governing reimbursement for public facilities in order to extend the period of transitional rates for large facilities that provide continuous nursing coverage to medically fragile populations for an additional year (*Louisiana Register*, Volume 43, Number 10). This proposed Rule is being promulgated in order to continue the provisions of the October 1, 2017 Emergency Rule.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part VII. Long Term Care

Subpart 3. Intermediate Care Facilities for Persons with Developmental Disabilities

Chapter 329. Reimbursement Methodology

Subchapter C. Public Facilities

§32969. Transitional Rates for Public Facilities

A. - B. ...

1. The department may extend the period of transition for an additional year, if deemed necessary, for an active CEA facility that is:

- a. a large facility of 100 beds or more;
- b. serves a medically fragile population; and
- c. provides continuous (24-hour) nursing coverage.

C. - F.4. ...

G. Reserved.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 39:326 (February 2013), amended LR 40:2588 (December 2014), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 29, 2017 at 9:30 a.m. in Room 173, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Intermediate Care Facilities for Persons with Intellectual Disabilities—Public Facilities Transitional Rate Extension

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed Rule will not affect revenue collections other than the federal share of the promulgation costs for FY 17-18. It is anticipated that \$216 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule continues the provisions of the October 1, 2017 Emergency Rule which amended the provisions governing intermediate care facilities for persons with intellectual disabilities (ICFs/ID) reimbursement for public facilities that are being privatized in order to extend the period of transitional rates for a large facility that provides continuous nursing coverage to medically fragile populations for an additional year. It is anticipated that implementation of this proposed rule will benefit the ICF/ID service provider in FY

17-18 as a result of the extension of the existing transitional reimbursement rate for an additional year. There are no anticipated costs to the ICF/ID service provider for FY 17-18, FY 18-19 and FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1710#054

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Bureau of Health Services Financing**

Intermediate Care Facilities for Persons
with Intellectual Disabilities
Reimbursement Methodology
Leave of Absence Days
(LAC 50:II.10307 and VII.33103)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:II.10307 and VII. in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing currently allows for exceptions to the annual limit on leave of absence days, which are temporary stays outside of the facility provided for in the written individual habilitation plan, for clients of intermediate care facilities for persons with intellectual disabilities (ICFs/ID).

The department now proposes to amend the provisions governing leave of absence days for ICFs/ID in order to exclude bereavement days for close family members from the annual limit.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part II. Nursing Facilities

Subpart 3. Standards for Payments

**Chapter 103. Standards for Payment for Intermediate
Care Facilities for the Mentally Retarded
(ICF/MR)**

**Subchapter B. Participation
§10307. Payments**

* * *

A. - B.1.b.i. ...

ii. leave of absence. A temporary stay outside the ICF/MR provided for in the client's written Individual Habilitation Plan. A leave of absence will not exceed 45 days per fiscal year (July 1 through June 30), and will not exceed 30 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 45-day limit as long as the leave does not exceed the 30 consecutive day limit and is included in the written individual habilitation plan. These exceptions are as follows:

- (a). - (d). ...
- (e). official state holidays; and

(f). two days for bereavement of close family members.

(i). *Close Family Members*—parent, step-parent, child, step-child, brother, step-brother, sister, step-sister, spouse, mother-in-law, father-in-law, grandparent, or grandchild.

* * *

1.c. - 10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:153.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Undersecretary, Bureau of Health Services Financing, LR 25:682 (April 1999), LR 31:1081 (May 2005), LR 31:1591 (July 2005), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Part VII. Long Term Care

**Subpart 3. Intermediate Care Facilities for Persons with
Intellectual Disabilities**

Chapter 331. Vendor Payments

§33103. Payment Limitations

A. - A.2.a. ...

b. leave of absence. A temporary stay outside the ICF/ID provided for in the client's written individual habilitation plan. A leave of absence will not exceed 45 days per fiscal year (July 1 through June 30) and will not exceed 30 consecutive days in any single occurrence. Certain leaves of absence will be excluded from the annual 45-day limit as long as the leave does not exceed the 30-consecutive day limit and is included in the written individual habilitation plan. These exceptions are as follows:

i. - iv. ...

v. official state holidays; and

vi. two days for bereavement of close family members.

(a). *Close Family Members*—parent, step-parent, child, step-child, brother, step-brother, sister, step-sister, spouse, mother-in-law, father-in-law, grandparent, or grandchild.

* * *

A.3. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Family Security, LR 13:578 (October 1987), amended by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 25:682 (April 1999), LR 31:1082 (May 2005), repromulgated LR 31:2257 (September 2005), amended by the Department of Health, Bureau of Health Services Financing, LR 43:325 (February 2017), LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have no impact on family functioning, stability or autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on child, individual, or family poverty as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Intermediate Care Facilities for Persons with Intellectual Disabilities—Reimbursement Methodology—Leave of Absence Days

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that implementation of this proposed rule will have no programmatic fiscal impact to the state other than the cost of promulgation for FY 17-18. It is anticipated that \$648 (\$324 SGF and \$324 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will have no effect on revenue collections other than the federal share of the promulgation costs for FY 17-18. It is anticipated that \$324 will be collected in FY 17-18 for the federal share of the expense for promulgation of this proposed rule and the final rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing leave of absence days for intermediate care facilities for persons with intellectual disabilities (ICFs/ID) in order to exclude bereavement days for close family members from the annual

limit. It is anticipated that this rule will be beneficial to recipients in that the days that they are absent from the facility for the bereavement of close family members are not counted toward their annual limit. It is anticipated that implementation of this proposed rule will have no costs or benefits to ICFs/ID in FY 17-18, FY 18-19 and FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1710#055

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Managed Care for Physical and Behavioral Health
Applied Behavior Analysis-Based Therapy Services
Integration (LAC 50:I.3507)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:I.3507 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing amended the provisions governing managed care for physical and behavioral health in order to allow Medicaid recipients enrolled in the LaHIPPP Program to access behavioral health services only through the managed care organizations (MCOs) that participate in the Healthy Louisiana (formerly Bayou Health) Program (*Louisiana Register*, Volume 43, Number 8).

The department has determined that it is necessary to amend the provisions governing managed care for physical and behavioral health in order to include applied behavior analysis-based therapy in the specialized behavioral health services the MCOs that participate in the Healthy Louisiana Program are required to provide.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part I. Administration

Subpart 3. Managed Care for Physical and Behavioral Health

Chapter 35. Managed Care Organization Participation Criteria

§3507. Benefits and Services

A. - C.4. ...

D. The following is a summary listing of the core benefits and services that an MCO is required to provide:

1. - 12. ...

13. basic and specialized behavioral health services, including applied behavior analysis (ABA) -based therapy services, excluding Coordinated System of Care services;

D.14. - F.1. ...

G. Excluded Services

1. - 1.e. ...

f. targeted case management services; and

g. all OAAS/OCDD home and community-based §1915(c) waiver services.

h. Repealed.

H. - H.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 37:1585 (June 2011), amended LR 39:92 (January 2013), repromulgated LR 39:318 (February 2013), LR 41:936 (May 2015), LR 41:2367 (November 2015), LR 42:755 (May 2016), amended the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will ensure continued access to behavioral health services through the MCOs for Medicaid recipients.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it reduces the financial burden for families with Medicaid recipients who are in need of behavioral health services through MCOs.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for November 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that

time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Managed Care for Physical and Behavioral Health—Applied Behavior Analysis-Based Therapy Services Integration

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in estimated state programmatic cost of approximately \$543,270 for FY 17-18, \$5,052,848 for FY 18-19 and \$6,914,957 FY 19-20. It is anticipated that \$540 (\$270 SGF and \$270 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18, and 64.23 in FY 18-19 and FY 19-20.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$938,178 for FY 17-18, \$9,073,091 for FY 18-19 and \$12,416,764 for FY 19-20. It is anticipated that the implementation of this proposed rule will increase premium tax revenue collections, which are classified as statutory dedications, by approximately \$0 for FY 17-18, \$4,249,262 for FY 18-19 and \$6,937,794 for FY 19-20. Note that by FY 19-20, premium tax collections will offset the increased state general fund required as a result of this rule change. It is anticipated that \$270 will be expended in FY 17-18 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18, and 64.23 in FY 18-19 and FY 19-20.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing managed care for physical and behavioral health in order to include applied behavior analysis (ABA)-based therapy as a covered service the managed care organizations (MCOs) that participate in the Healthy Louisiana Program are required to provide. This proposed Rule may be beneficial to recipients as it will allow access to ABA services through the MCOs. There is no anticipated impact to providers. It is anticipated that implementation of this proposed rule will increase Medicaid programmatic expenditures for managed care services by approximately \$1,481,178 for FY 17-18, \$14,125,939 for FY 18-19 and \$19,331,721 for FY 19-20 due to the addition of the managed care administrative load that includes premium tax, profit and administrative expenses. Though interminable at this time, it is also anticipated that the MCOs will be able to curb growth in this program resulting in lower expenditures than if the services remained in the fee-for-service model.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition.

Jen Steele
Medicaid Director
1710#056

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Professional Services Program State-Owned or Operated Professional Services Practices Enhanced Reimbursement Rates (LAC 50:IX.15110 and 15113)

The Department of Health, Bureau of Health Services Financing proposes to adopt LAC 50:IX.15110, and to amend §15113, in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This proposed Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing provides reimbursement under the Medicaid State Plan to physicians and other professional services practitioners for services rendered to Medicaid covered recipients.

The department now proposes to amend the provisions governing the Professional Services Program in order to revise the reimbursement methodology governing services rendered by physicians and other professional services practitioners employed by, or under contract to provide services in affiliation with, a state-owned or operated entity in order to enhance the reimbursement rates.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part IX. Professional Services Program

Subpart 15. Reimbursement

Chapter 151. Reimbursement Methodology

Subchapter A. General Provisions

§15110. State-Owned or Operated Professional Services Practices

A. Qualifying Criteria. Effective for dates of service on or after February 1, 2018, in order to qualify to receive enhanced rate payments for services rendered to Medicaid recipients under these provisions, physicians and other eligible professional service practitioners must be:

1. licensed by the state of Louisiana;
2. enrolled as a Louisiana Medicaid provider; and
3. employed by, or under contract to provide services in affiliation with, a state-owned or operated entity, such as a state-operated hospital or other state entity, including a state academic health system, which:
 - a. has been designated by the department as an essential provider. Essential providers include:
 - i. LSU School of Medicine—New Orleans;
 - ii. LSU School of Medicine—Shreveport; and
 - iii. LSU state-operated hospitals (Lallie Kemp Regional Medical Center and Villa Feliciana Geriatric Hospital).

B. State-owned or operating entities shall identify to the department which professional service practitioners/groups qualify for the enhanced rate payments.

C. Payment Methodology

1. Effective for dates of service on or after February 1, 2018, payments shall be made at the community rate level for services rendered by physicians and other eligible professional service practitioners who qualify under the provisions of §15110.A.

a. *Community Rate Level*—the rates paid by commercial payers for the same service.

b. The provider's average commercial rate (ACR) demonstration will be updated at least every three years.

c. Enhanced rates are based on average commercial rates effective during the state fiscal year proceeding the fiscal year in which the ACR is calculated for each service designated by a current procedural terminology (CPT) code recognized by the Medicaid program as a covered service.

2. For services rendered by physicians and other professional services practitioners, in affiliation with a state-owned or operated entity, the department will collect from the state owned or operated entity its current commercial rates/fee schedules by CPT code for their top three commercial payers by volume.

3. The department will calculate the average commercial rate for each CPT code for each professional services practice that provides services in affiliation with a state-owned or operated entity.

4. The department will extract from its paid claims history file, for the preceding fiscal year, all paid claims for those physicians and professional practitioners who will qualify for the enhanced reimbursement rates. The department will align the average commercial rate for each CPT code to each Medicaid claim for the physician or professional services practitioner/practice plan and calculate the average commercial payments for the claims.

5. The department will also align the same paid Medicaid claims with the Medicare rates for each CPT code for the physician or professional services practitioner and calculate the Medicare payment amounts for those claims. The Medicare rates will be the most currently available national non-facility rates.

6. The department will calculate an overall Medicare to commercial conversion factor by dividing the total amount of the average commercial payments for the claims by the total Medicare payments for the claims.

7. This conversion factor will be applied to the current Medicare rates for all procedure codes payable for Medicaid to create the enhanced reimbursement rate.

D. Payment to physician-employed physician assistants and registered nurse practitioners shall be 80 percent of the maximum allowable rate paid to physicians.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health, Bureau of Health Services Financing, LR 44:

Subchapter B. Physician Services

§15113. Reimbursement Methodology

A. - M. ...

N. Effective for dates of service on or after February 1, 2018, physicians, who qualify under the provisions of §15110 for services rendered in affiliation with a state-owned or operated entity that has been designated as an

essential provider, shall receive enhanced reimbursement rates up to the community rate level for qualifying services as determined in §15110.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 36:1252 (June 2010), amended LR 36:2282 (October 2010), LR 37:904 (March 2011), LR 39:3300, 3301 (December 2013), LR 41:541 (March 2015), LR 41:1119 (June 2015), LR 41:1291 (July 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a positive impact on family functioning, stability and autonomy as described in R.S. 49:972 as it will ensure continued access by Medicaid recipients to services rendered by physicians and other professional services practitioners affiliated with state-owned or operated professional services practices.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a positive impact on child, individual or family poverty in relation to individual or community asset development as described in R.S. 49:973 as it reduces the financial burden for families of Medicaid recipients who are in need of access to services rendered by physicians and other professional services practitioners affiliated with state-owned or operated professional services practices.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and may reduce the total direct and indirect cost to the provider to provide the same level of service. It may also enhance the provider's ability to provide the same level of service since this proposed Rule increases the payment to providers for the same services they already render.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Professional Services Program State-Owned or Operated Professional Services Practices—Enhanced Reimbursement Rates

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase programmatic costs to the state of approximately \$2,133,155 for FY 17-18, \$6,242,998 for FY 18-19 and \$6,242,998 for FY 19-20. It is anticipated that \$756 (\$378 SGF and \$378 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule. The state match shall be funded through an intergovernmental transfer of funds from the qualifying professional services providers. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19 and 19-20.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$3,685,324 for FY 17-18, \$11,210,170 for FY 18-19 and \$11,210,170 for FY 19-20 and self-generated revenue collections by approximately \$2,132,777 in FY 17-18, \$6,242,998 in FY 18-19 and \$6,242,998 in FY 19-20. It is anticipated that \$378 will be expended in FY 17-18 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 in FY 18-19 and FY 19-20.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing the Professional Services Program in order to revise the reimbursement methodology governing services rendered by physicians and other professional services practitioners employed by, or under contract to provide services in affiliation with, a state-owned or operated entity in order to enhance the reimbursement rates. It is anticipated that implementation of this proposed rule will have economic benefits to professional services providers and will increase programmatic expenditures for the Professional Services Program by approximately \$5,817,723 for FY 17-18 and \$17,453,168 for FY 18-19 and \$17,453,168 for FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

It is anticipated that the implementation of this proposed rule will not have an effect on competition. However, it is

anticipated that the implementation of this proposed rule may have a positive effect on employment as it will increase the reimbursement rates paid to qualifying physicians and professional services practitioners. The increase in payments may improve the financial standing of providers and could possibly cause an increase in employment opportunities.

Jen Steele
Medicaid Director
1710#057

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Health Bureau of Health Services Financing

Targeted Case Management
Reimbursement Methodology
Early and Periodic Screening, Diagnosis and Treatment
(LAC 50:XV.10701)

The Department of Health, Bureau of Health Services Financing proposes to amend LAC 50:XV.10701 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Rule is promulgated in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq.

The Department of Health, Bureau of Health Services Financing amended the provisions governing the reimbursement methodology for targeted case management (TCM) services provided to New Opportunities Waiver recipients in order to adopt a payment methodology based on a flat monthly rate rather than 15-minute increments (*Louisiana Register*, Volume 40, Number 9).

The department has now determined that it is necessary to amend the provisions governing reimbursement for TCM services provided to participants in the Early and Periodic Screening, Diagnosis and Treatment Program in order to adopt a payment methodology based on a flat monthly rate rather than 15-minute increments.

Title 50

PUBLIC HEALTH—MEDICAL ASSISTANCE

Part XV. Services for Special Populations

Subpart 7. Targeted Case Management

Chapter 107. Reimbursement

§10701. Reimbursement

A. - K.2. ...

L. Effective for dates of service on or after April 1, 2018, case management services provided to participants in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program shall be reimbursed at a flat rate for each approved unit of service. The standard unit of service is equivalent to one month.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 30:1040 (May 2004), amended LR 31:2032 (August 2005), LR 35:73 (January 2009), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1903 (September 2009), LR 36:1783 (August 2010), amended by the Department of Health and Hospitals, Bureau of Health Services Financing and the Office of Public Health, LR 39:97 (January 2013), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR

39:3302 (December 2013), LR 40:1700, 1701 (September 2014), LR 41:1490 (August 2015), amended by the Department of Health, Bureau of Health Services Financing, LR 44:

Implementation of the provisions of this Rule may be contingent upon the approval of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), if it is determined that submission to CMS for review and approval is required.

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this proposed Rule will have a no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

In compliance with Act 854 of the 2012 Regular Session of the Louisiana Legislature, the poverty impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have a no impact on child, individual, or family poverty in relation to individual or community asset development as described in R.S. 49:973.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of this proposed Rule has been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, no direct or indirect cost to the provider to provide the same level of service, and will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding this proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on this proposed Rule is scheduled for Wednesday, November 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Targeted Case Management Reimbursement Methodology

Early and Periodic Screening, Diagnosis and Treatment

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

It is anticipated that the implementation of this proposed rule will result in net estimated state general fund costs of approximately \$1,085 for FY 17-18, \$5,079 for FY 18-19, and

\$5,065 for FY 19-20. It is anticipated that \$432 (\$216 SGF and \$216 FED) will be expended in FY 17-18 for the state's administrative expense for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19 and FY 19-20.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

It is anticipated that the implementation of this proposed rule will increase federal revenue collections by approximately \$1,618 for FY 17-18 \$8,547 for FY 18-19 and \$8,561 for FY 19-20. It is anticipated that \$216 will be expended in FY 17-18 for the federal administrative expenses for promulgation of this proposed rule and the final rule. The numbers reflected above are based on a blended Federal Medical Assistance Percentage (FMAP) rate of 63.34 percent in FY 17-18 and 64.23 percent in FY 18-19 and 19-20.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This proposed Rule amends the provisions governing reimbursement for targeted case management (TCM) services provided to participants in the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program in order to adopt a payment methodology based on a flat monthly rate rather than 15-minute increments. This proposed Rule has no anticipated impact to recipients. However, the change in payment methodology may be beneficial to providers of EPSDT TCM services since the monthly reimbursement amount per recipient will be higher than the current aggregate per unit reimbursement amount. It is anticipated that implementation of this proposed rule will increase programmatic expenditures for TCM services by approximately \$2,271 for FY 17-18, \$13,626 for FY 18-19 and \$13,626 for FY 19-20.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule has no known effect on competition and employment.

Jen Steele
Medicaid Director
1710#058

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Health
Emergency Response Network**

Trauma Program Recognition (LAC 48:I.19707)

Notice is hereby given that the Louisiana Emergency Response Network Board has exercised the provisions of R.S. 49:950 et seq., the Administrative Procedure Act, and intends to codify in LAC 48:I.Chapter 197, Section 19707, a Rule revised by the Louisiana Emergency Response Network Board in a meeting of August 17, 2017, the following "Trauma Program Recognition", adopted as authorized by R.S. 9:2798.5. The Rule clarifies timeliness and requirements for hospitals seeking Trauma Program recognition.

Title 48

PUBLIC HEALTH—GENERAL

Part I. General Administration

Subpart 15. Emergency Response Network

Chapter 197. Trauma Program Recognition

§19707. Procedure for Trauma Program Recognition

A. - C. ...

D. To maintain trauma program recognition, the hospital must request an ACS verification or consultation site visit at the time of the attestation or within 30 days thereafter, with the consultation or survey to occur within 12 months of the attestation or as close to 12 months as the ACS schedule allows. Written documentation of the request and scheduling must be submitted to LERN.

1. If an ACS verification or consultation site visit is not requested within 30 days and does not occur within 12 months or as close to 12 months as the ACS schedule allows, the trauma program indicator on LERN resource management screen will be removed.

E. After a consultation visit for the desired trauma level, the hospital has 30 days to schedule the verification survey by the ACS to occur within 12 months of the consultation or as close to 12 months as the ACS schedule allows. Written documentation of the request and scheduling must be submitted to LERN.

1. If documentation of scheduling per required parameters is not submitted to LERN and the ACS verification survey is not scheduled to occur within 12 months of the consultation or as close to 12 months as the ACS schedule allows, the trauma program indicator will be removed on the LERN resource management screen.

2. If the hospital fails the ACS verification visit and a focused review visit, the hospital will lose trauma program status. The trauma program indicator will be removed on the LERN resource management screen.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2846(A), R.S. 40:2845(A)(1) and R.S. 9:2798.5.

HISTORICAL NOTE: Promulgated by the Department of Health, Emergency Response Network, LR 42:1932 (November 2016), amended LR 44:

Family Impact Statement

1. What effect will this rule have on the stability of the family? The proposed Rule will not affect the stability of the family.

2. What effect will this have on the authority and rights of persons regarding the education and supervision of their children? The proposed Rule will not affect the authority and rights of persons regarding the education and supervision of their children.

3. What effect will this have on the functioning of the family? The Rule will not affect the functioning of the family.

4. What effect will this have on family earnings and family budget? This Rule will not affect the family earnings or family budget.

5. What effect will this have on the behavior and personal responsibility of children? This Rule will not affect the behavior or personal responsibility of children.

6. Is the family or local government able to perform the function as contained in this proposed Rule? No, the proposed Rule will have no impact.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

The impact of the proposed Rule on small business has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small business as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small business.

Provider Impact Statement

In compliance with House Concurrent Resolution (HCR) 170 of the 2014 Regular Session of the Louisiana Legislature, the provider impact of these proposed rules have been considered. It is anticipated that this proposed Rule will have no impact on the staffing level requirements or qualifications required to provide the same level of service, and no increase on direct or indirect cost. The proposed Rule will have no impact on the provider's ability to provide the same level of service as described in HCR 170.

Public Comments

Interested persons may submit written comments relative to the proposed Rule until 4:30 p.m., Wednesday, November 10, 2017 to Paige Hargrove, Louisiana Emergency Response Network, 14141 Airline Hwy., Suite B, Building 1, Baton Rouge, LA 70817, or via email to paige.hargrove@la.gov.

Paige Hargrove
Executive Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Trauma Program Recognition

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the publication fee associated with the proposed rule changes, which are estimated to cost the Louisiana Emergency Response Network (LERN) \$639, it is not anticipated that LERN will incur any other costs or savings. The proposed rule states that a hospital must request a consultation or survey visit from the American College of Surgeons within 30 days of receiving Trauma Program recognition from LERN.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

There is no anticipated effect on revenue collections of LERN as a result of this proposed rule change.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There are no estimated costs and/or economic benefits to hospitals. The rule change only adds a timeline in which a consultation/survey visit from the American College of Surgeons must be requested.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This rule clarifies LAC 48:I, Chapter 197 §19707 - specifically, timelines and requirements for hospitals seeking Trauma Program recognition. Trauma Program Recognition is a voluntary process. There is no effect on employment.

Paige Hargrove
Executive Director
1710#044

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Insurance Office of the Commissioner

Regulation 109—Producer, Adjuster and Related Licenses (LAC 37:XIII.Chapter 155)

In accordance with R.S. 49:950 et seq., the Administrative Procedure Act, and through the authority granted under R.S. 22:1 and 22:11, et seq., the Department of Insurance hereby gives notice of its intent to promulgate Regulation 109 to implement the provisions of Act 154 of the 2017 Regular Session of the Louisiana Legislature, specifically R.S. 22:821(B)(3) and 22:1546(B)(1)(a), in addition to 22:1547(C)(1), 22:255, 22:1545, 22:1554, 22:1558, 22:1563, 22:1671, 22:1694, 22:1808.8 and 22:1922 which provide for the licensing of insurance producers, claims adjusters, public adjusters, insurance consultants and the licensing of business entities as insurance producers.

Title 37

INSURANCE

Part XIII. Regulations

Chapter 155. Regulation Number 109—Producer, Adjuster and Related Licenses

§15501. Purpose

A. Regulation 109 implements the provisions of Act 154, of the 2017 Regular Session of the Louisiana Legislature, specifically R.S. 22:821(B)(3) and 22:1546(B)(1)(a), in addition to 22:1547(C)(1), 22:255, 22:1545, 22:1554, 22:1558, 22:1563, 22:1671, 22:1694, 22:1808.8 and 22:1922 which provide for the licensing of insurance producers, claims adjusters, public adjusters, insurance consultants and business entities acting as producers.

B. The purpose of this regulation is:

1. to set forth requirements and procedures for applying for and maintaining a license as an insurance producer, claims adjuster, public adjuster, insurance consultant and business entity acting as a produce;

2. to set forth the time periods for expiration and renewal of insurance licenses.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:1545, 22:1550, 22:1554, 22:1558, 22:1678, 22:1708 22:1808.8 and 22:1922 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15503. Applicability and Scope

A. Regulation 109 shall apply to all persons and all business entities seeking licensure or who hold a license as

an insurance producer, claims adjuster, public adjuster or insurance consultant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:1545, 22:1550, 22:1554, 22:1558, 22:1563, 22:1678, 22:1708, 22:1808.8 and 22:1922 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15505. Authority

A. Regulation 109 is promulgated by the commissioner pursuant to the authority granted under the *Louisiana Insurance Code*, R.S. 22:1 et seq., particularly R.S. 22:11, and specifically R.S. 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:691.2(3), 22:1545, 22:1550, 22:1554, 22:1558, 22:1563, 22:1678, 22:1708, 22:1808.8 and 22:1922.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:691.2(3), 22:1545, 22:1550, 22:1554, 22:1558, 22:1563, 22:1678, 22:1708, 22:1808.8, 22:1922 and 22:1929(A) and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15507. Definitions

A. For the purposes of Regulation 109 the following terms shall have the meaning ascribed herein unless the context clearly indicates otherwise.

Applicant—a person making application to the Louisiana Department of Insurance to obtain an insurance producer, claims adjuster, public adjuster or insurance consultant license.

Business Entity—as defined in R.S. 22:1542(2).

Claims Adjuster—as defined in R.S. 22:1661(1).

Commissioner—the commissioner of insurance of the Louisiana Department of Insurance.

Control—as defined in R.S. 22:691.2(3).

Insurance Consultant—as defined in R.S. 22:1808.1(B).

Insurance License—a license granted by the Louisiana Department of Insurance to do business as an insurance producer, claims adjuster, public adjuster or insurance consultant.

Insurance Producer—as defined in R.S. 22:1542(6).

Public Adjuster—as defined in R.S. 22:1692(7).

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:255, 22:691.2(3), 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:1545, 22:1550, 22:1554, 22:1678, 22:1708 and 22:1808.8 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15509. Licensing Application

A. Every application for an insurance license shall be made on a form required by the commissioner and shall include all such information the commissioner deems necessary to determine compliance with the applicable statutes.

B. Complete application shall include all of the following:

1. a completed application form as required by the commissioner;

2. all documentation deemed necessary to explain any responses in the application form;

3. a passing examination score for each of the lines for which the application was made if an examination is required;

4. evidence that the individual's fingerprints have been submitted in compliance with the applicable provisions of the *Louisiana Insurance Code*;

5. any documents deemed necessary to verify the information contained in an application.

C. The commissioner may close as incomplete any application which the applicant fails to complete within 90 days of initial submission.

D. During review of a pending application, the applicant shall notify the commissioner of any changes to the information set forth in the application within five days of the date of such change.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:1545, 22:1550, 22:1554, 22:1678, 22:1708, 22:1808.8, 22:1922 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15511. Examinations

A. Scheduling of examinations shall be as follows.

1. An applicant for a type of license for which an examination is required may schedule and sit for the examination prior to making application to the commissioner for such insurance license.

2. An individual seeking licensure for the bail bond line of authority shall complete the Bail Bond Apprenticeship Program as required by R.S. 22:1574 and provide evidence of such completion to the commissioner prior to scheduling or sitting for the examination.

B. Any required pre-licensing education must be completed before scheduling an examination. Proof of successful completion of pre-licensing requirements shall be provided to the commissioner or testing vendor prior to scheduling an examination.

C. An applicant for a line of authority for which an examination is required shall submit a completed application for that line within 365 days of passing the examination.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:1545, 22:1550, 22:1554, 22:1574, 22:1678, 22:1708, 22:1808.8, and 22:1922 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15513. Fingerprinting

A. An individual making application for a resident insurance license shall submit a full set of fingerprints as required by the applicable provisions of the *Louisiana Insurance Code*. The fingerprints shall be submitted in the manner required by the commissioner.

B. The commissioner may require that any individual who is an officer, director, partner, member or who controls an applicant that is a business entity submit a full set of fingerprints in a manner required by the commissioner.

C. The applicant shall supply any additional information requested by the commissioner to clarify or explain findings of the criminal history obtained using the fingerprint or other search.

D. The commissioner may require that any applicant who fails to provide a completed application within 90 days

of receipt of a criminal background check resubmit fingerprints in the manner required by the commissioner.

E. All communication regarding the results of a criminal background check shall be only with the applicant or his authorized legal representative.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:1545, 22:1550, 22:1554, 22:1678, 22:1708, 22:1808.8, 22:1922(C) and 22:1929(A) and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15515. License Expiration and Renewal

A. Insurance licenses shall expire in the following manner.

1. An individual insurance license where the last number of the license is an even number shall expire on the last date of the birth month of the individual in even-numbered years.

2. An individual insurance license where the last number of the license is an odd number shall expire on the last date of the birth month of the individual in odd-numbered years.

3. A business entity license where the last number is an even number shall expire on March 31 in even-numbered years.

4. A business entity license where the last number is an odd number shall expire on March 31 in odd-numbered years.

B. A renewal application may be submitted up to 90 days prior to expiration of the license provided all requirements for renewal of the license have been met.

C. A licensee may choose to renew only some of the specific lines of an insurance license. Submission of such a renewal shall be considered cancellation of the lines not included in the renewal. The lines so cancelled may be reactivated within two years of cancellation by submitting an application to add the lines, including the fee required by R.S. 22:821(B)(3), and evidence that the licensee has met the continuing education required to maintain the lines.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:1545, 22:1550, 22:1554, 22:1678, 22:1708 and 22:1808.8 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15517. Expiration of Producer Appointments

A. Insurance producer appointments shall expire on April 30 of each year. Appointments shall be renewed by payment of the renewal fee. The commissioner shall issue a renewal invoice for all active appointments to insurers on or about April 1 of each year in a manner determined by the commissioner. Failure to timely pay the renewal fee invoice shall result in the expiration of the appointments.

B. The insurer shall terminate any appointments that it does not wish to renew prior to the issuance of the renewal invoice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:1545, 22:1550, 22:1554, 22:1558, 22:1678, 22:1708 and 22:1808.8 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15519. Reporting of Administrative Actions

A. Every person who holds an insurance license shall report to the commissioner all administrative actions within 30 days of the final disposition of the action in the manner required by the commissioner. The report shall include a copy of the order, consent agreement, stipulation or other relevant legal documents.

B. "Administrative actions" shall include any fines, revocations, suspensions or surrender of a license or registration in lieu of such actions imposed by any state or federal agency or any non-governmental entity with regulatory oversight of a license or registration. It shall also include any consent agreements, stipulations or other such agreement with any state or federal agency or non-governmental entity with regulatory oversight of a license or registration initiated as a result of allegations of wrongdoing or regulatory or legal infractions regardless of whether or not any wrongdoing was admitted by the licensee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:1547(C)(1), 22:255, 22:1545, 22:1550, 22:1554, 22:1558, 22:1563, 22:1678, 22:1708 and 22:1808.8 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15521. Violations and Penalties

A. Any failure to comply with this regulation shall be considered a violation of R.S. 22:1543, 22:1554, 22:1558, 22:1563, 22:1574, 22:1663, 22:1693, 22:1808.1 and 22:1808.8. Violations of this regulation shall subject the violators to penalties as provided by R.S. 22:1554, 22:1672, 22:1700 and 22:1808.12(B) and any other applicable provisions of law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:255, 22:1545, 22:1550, 22:1554, 22:1563, 22:1678, 22:1708, 22:1808.8 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15523. Effective Date

A. Regulation 109 shall become effective upon final publication in the *Louisiana Register* and shall apply to any act or practice committed on or after the effective date.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:255, 22:1545, 22:1550, 22:1678, 22:1708 and 22:1808.8 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

§15525. Severability

A. If any Section or provision of Regulation 109 or the application to any person or circumstance is held invalid, such invalidity or determination shall not affect other Sections or provisions or the application of Regulation 109 to any persons or circumstances that can be given effect without the invalid Section or provision or application, and for these purposes the Sections and provisions of Regulation 109 and the application to any persons or circumstances are severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22:11, 22:821(B)(3), 22:1546(B)(1)(a), 22:255, 22:1545, 22:1550, 22:1678, 22:1708 and 22:1808.8 and the Administrative Procedure Act, R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 44:

Family Impact Statement

1. Describe the effect of the proposed regulation on the stability of the family. The proposed amended regulation should have no measurable impact upon the stability of the family.

2. Describe the effect of the proposed regulation on the authority and rights of parents regarding the education and supervision of their children. The proposed amended regulation should have no impact upon the rights and authority of children regarding the education and supervision of their children.

3. Describe the effect of the proposed regulation on the functioning of the family. The proposed amended regulation should have no direct impact upon the functioning of the family.

4. Describe the effect of the proposed regulation on family earnings and budget. The proposed amended regulation should have no direct impact upon family earnings and budget.

5. Describe the effect of the proposed regulation on the behavior and personal responsibility of children. The proposed amended regulation should have no impact upon the behavior and personal responsibility of children.

6. Describe the effect of the proposed regulation on the ability of the family or a local government to perform the function as contained in the Rule. The proposed amended regulation should have no impact upon the ability of the family or a local governmental unit to perform the function as contained in the Rule.

Poverty Impact Statement

1. Describe the effect on household income, assets, and financial security. The proposed amended regulation should have no effect on household income assets and financial security.

2. Describe the effect on early childhood development and preschool through postsecondary education development. The proposed amended regulation should have no effect on early childhood development and preschool through postsecondary education development.

3. Describe the effect on employment and workforce development. The proposed amended regulation should have no effect on employment and workforce development.

4. Describe the effect on taxes and tax credits. The proposed amended regulation should have no effect on taxes and tax credits.

5. Describe the effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance. The proposed amended regulation should have no effect on child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Small Business Analysis

The impact of the proposed regulation on small businesses as defined in the Regulatory Flexibility Act has been considered. It is estimated that the proposed action is not expected to have a significant adverse impact on small businesses. The agency, consistent with health, safety, environmental and economic welfare factors has considered

and, where possible, utilized regulatory methods in the drafting of the proposed regulation that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed regulation on small businesses.

1. Identification and estimate of the number of the small businesses subject to the proposed Rule. The proposed amended regulation should have no measurable impact upon small businesses.

2. The projected reporting, record keeping, and other administrative costs required for compliance with the proposed Rule, including the type of professional skills necessary for preparation of the report or record. The proposed amended regulation should have no measurable impact upon small businesses.

3. A statement of the probable effect on impacted small businesses. The proposed amended regulation should have no measurable impact upon small businesses.

4. Describe any less intrusive or less costly alternative methods of achieving the purpose of the proposed Rule. The proposed amended regulation should have no measurable impact on small businesses; therefore, will have no less intrusive or less cost alternative methods.

Provider Impact Statement

1. Describe the effect on the staffing level requirements or qualifications required to provide the same level of service. The proposed amended regulation will have no effect.

2. The total direct and indirect effect on the cost to the provider to provide the same level of service. The proposed amended regulation will have no effect.

3. The overall effect on the ability of the provider to provide the same level of service. The proposed amended regulation will have no effect.

Public Comments

Interested persons may submit written comments on the proposed Regulation 109 until 5 p.m., November 20, 2017, to Zata Ard, Division of Legal Services, Department of Insurance, P.O. Box 94214, Baton Rouge, LA 70804.

James J. Donelon
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Regulation 109

Producer, Adjuster and Related Licenses

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rules will not result in any additional costs or savings to state or local governmental units. The proposed rules implement provisions of Act 154, of the 2017 Regular Session and set forth requirements and procedures regarding the application for and maintenance of a license as an insurance producer, claims adjuster, public adjuster, insurance consultant, and business entity acting as a producer. Furthermore, the proposed rules set forth the time periods for expiration and renewal of insurance licenses.

Additional provisions in the proposed rules regarding license applications, examinations, fingerprinting, expiration of producer appointments, reporting of administrative actions, and violations and penalties carry no fiscal impact as they are currently being administered and enforced. The LA Dept. of

Insurance is including the aforementioned provisions in the proposed rules for the purpose of clarity.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rules will result in a net increase of self-generated revenues in FY 18 (\$500,000) and FY 19 (\$300,000) that will normalize in FY 20 and subsequent FYs. Act 154 of the 2017 Regular Session modifies the fee schedule by creating an “all other” category of producer lines that consolidates the license lines to renewing all lines every two years rather than renewal of certain lines every year. While Act 154 and the proposed rules do not increase fees, they do alter timelines for renewal. As a result, some renewals that would not have occurred as soon will be advanced and occur in FYs 18 and 19, which accounts for the increased revenue levels in those years. Revenue levels will normalize beginning FY 20 as renewals begin to occur every two years.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rules unify the renewal period for insurance producer licenses by creating an “all other lines” category to consolidate insurance producer license for life, health, and annuities; property and casualty; limited lines; and limited lines credit insurance. While some insurance producers will pay fees earlier than they otherwise would have in FYs 18 and 19 as a result of the unifying the renewal schedules, the proposed rules will benefit producers in unifying renewals of all lines at once every two years, rather than having certain lines renewed every year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rules will not affect competition or employment.

Mary Elizabeth Butler
Deputy Commissioner
1710#068

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Louisiana State University System
Louisiana State University Health Sciences Center
Louisiana Tumor Registry**

Tumor Registry (LAC 48:V.Chapter 85)

Under the authority of Louisiana R.S. 40:1105.1 et seq., and in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., the president of the Louisiana State University System proposes to amend LAC 48:V.Chapter 85 to assist in the statewide cancer care coordination program; align with Acts 373 of the 2017 Regular Legislative Session; update the statute numbers associated with the Louisiana Tumor Registry (LTR) after renumbering in 2015; update the website address of the registry; and provide for related matters by amending Chapter 85 of Title 48 of the *Louisiana Administrative Code*. The proposed revisions to the Louisiana Tumor Registry rules comply with R.S. 40:1105.1 et seq., which authorizes the registry to monitor the incidence of cancer in Louisiana.

Title 48

PUBLIC HEALTH—GENERAL

Part V. Preventive Health Services

Subpart 31. Louisiana Tumor Registry

Chapter 85. Statewide Tumor Registry Program

§8501. Purpose

A. R.S. 40:1105.1 et seq., established a “statewide registry program for reporting cancer cases for the purpose of gathering statistical data to aid in the assessment of cancer incidence, survival rates, possible causes of specific cancers, and other related aspects of cancer in Louisiana.” In order to provide cancer registry data for interventions to reduce exposure to cancer risks, increase early detection, and improve cancer care and health-related quality of life, the registry will obtain data via new technology from medical/health records, linkages with external files, and directly from cancer patients. The LTR will use its infrastructure and data to assist in the statewide cancer care coordination program. In carrying out this mandate, the Louisiana Tumor Registry collaborates with the National Cancer Institute, the Centers for Disease Control and Prevention, national and international cancer surveillance programs, health care providers and facilities, public health agencies, and research institutions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:1298 (July 1998), amended by the LSU Health Sciences Center, Health Care Services Division, Tumor Registry, LR 30:2836 (December 2004), amended by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 35:2786 (December 2009), LR 39:3304 (December 2013), LR 44:

§8502. Background

A. - E. ...

F. Acts No. 373 of the 2017 Regular Legislative Session requires LTR, within the confines of federal privacy laws, to provide diagnostic, treatment and follow-up information for a patient at the request of a physician or medical facility. It also requires LTR to continue to cooperate with Office of Public Health of the Department of Health (LOPH) in the implementation of a program of cancer investigation and intervention, if funding is available, and on evaluation of programs. It changes the smallest level of data released by the LTR to the census tract, if it does not violate suppression rules or federal privacy laws. If a data request is denied by LSUHSC-New Orleans’ Institutional Review Board (IRB), the requestor must be given notice in writing of the reason. The LTR Research Committee is expanded to include more qualified members. The annual report is now required to be sent to more governmental entities and the governing body of each parish, as well as LTR creating a mechanism for individuals to be notified when it is published on its website.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:1298 (July 1998), amended by the LSU Health Sciences Center, Health Care Services Division, Tumor Registry, LR 30:2836 (December 2004), amended by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 35:2786 (December 2009), LR 39:3304 (December 2013), LR 44:

§8503. Definitions

Confidential Data—shall include any information that pertains to an individual cancer case, as ordinarily distinguished from group, aggregate, or tabular data. Statistical totals of "0" or "1" may be deemed confidential, case-specific data. Confidential, case-specific data include, but are not limited to, primary or potential personal identifiers. In addition, in research involving data contained in the National Center for Health Statistics database, statistical totals of 5 or less are also deemed confidential data and are suppressed unless prior written consent of all of the affected respondents has been obtained in accordance with 42 U.S.C. §242k(l); 5 U.S.C. §552(a); and <http://www.cdc.gov/nchs/data/misc/staffmanual2004.pdf> (p. 16).

* * *

Follow-Up Information—information that is used to document outcome and survival for all types of cancer. The information includes, but is not limited to, patient identifiers, treatment, recurrence or progression, vital status, and date of last contact. If the patient is deceased, date of death and causes of death are included.

* * *

Health Care Provider—every licensed health care facility and licensed health care provider, as defined in R.S. 40:1231.1(A)(10), in the state of Louisiana, as well as out-of-state facilities and providers that diagnose and/or treat Louisiana residents.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:1298 (July 1998), amended by the LSU Health Sciences Center, Health Care Services Division, Tumor Registry, LR 30:2836 (December 2004), amended by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 35:2787 (December 2009), LR 39:3305 (December 2013), LR 44:

§8505. Responsibilities of Health Care Facilities and Providers

A. All hospitals, pathology laboratories, radiation centers, physicians, nursing homes, hospices, other licensed health care facilities and providers as defined in R.S. 40:1231.1(A)(10) as well as coroners' offices shall report all reportable cases (see §8507.A) to the LTR, a public health authority. In addition, they shall provide information for all cancer-related studies conducted by the cancer registry program. Health care facilities and providers shall report cases regardless of whether the patient is a resident of Louisiana or of where the patient was originally diagnosed and/or treated. As needed for surveillance or cancer studies, the LTR shall have remote electronic access, where

available, or physical access to all medical records, aligning identifiers (name, Social Security number, and date of birth), and obtain related diagnostic material such as biospecimens of cancers. Physician offices diagnosing and treating cancer patients shall submit cancer case information electronically to the LTR if their electronic health record (EHR) has the capability.

B. The LTR is mandated to conduct cancer studies and may request additional information from medical/health records and self-reported surveys of cancer patients, and diagnostic material in order to carry out these studies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:1298 (July 1998), amended by the LSU Health Sciences Center, Health Care Services Division, Tumor Registry, LR 30:2837 (December 2004), amended by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 35:2787 (December 2009), LR 39:3305 (December 2013), LR 44:

§8507. Case Reporting

A. - B.3. ...

4. Diagnosis-related material, such as cancer biospecimens and pathology slides, as well as biological materials such as saliva samples, shall be sent to the Louisiana Tumor Registry if requested.

C. ...

D. Variables to be Reported

1. At a minimum, the reports from non-hospital reporting sources shall include the identifiers, demographic, diagnostic, treatment, and follow-up information required by U.S. Public Law 102-151. Hospital-based reporters must use the standard variables, including identifiers, and codes established by the North American Association of Central Cancer Registries. A complete list of data items is available on the LTR website. Additional variables may be requested as needed to carry out the full mandate of registry operations, including Louisiana-specific cancer studies and meeting the requirements of the LTR funding agencies.

E. - E.1. ...

2. Pathology laboratories, radiation centers, surgery centers, physicians, and other licensed health care facilities and providers, shall report cancer cases, as defined in §8507.A, within two months of diagnosis or of the facility's first contact with that patient for cancer.

3. Hospices and nursing homes shall identify cancer cases and provide copies of medical records (electronic or paper copies) as requested.

4. In addition, providers shall notify the LTR within one month if they diagnose or treat any cancer patient under age 20 years old.

F. Failure to Report. If a facility fails to meet the deadline for reporting in the format specified by the Louisiana Tumor Registry or if the data are of unacceptable quality, personnel from the LTR or its contractors may enter the facility to screen and abstract the information. In such situations, the facility shall reimburse the Louisiana Tumor Registry or its contractor \$45 per case or the actual cost of screening, abstracting, coding, and editing, whichever is greater. Facilities refusing to cooperate within one month of the LTR's request for cancer reporting may be fined. Fines

accrue daily after this one month of noncooperation at \$100 per day, with a cap of \$5000 total. Money from fines accrue to the LTR account, for LTR operations. The LTR may take legal action if necessary to enforce compliance with the law.

G. Quality Assurance

1. Staff members from the LTR central office, the regional registries, and national cancer surveillance programs designated by the LTR shall perform periodic quality assurance studies at all reporting facilities. These studies shall include:

- a. rescreening medical and health records to ensure that all reportable cases have been identified;
- b. reabstracting the records of patients to ensure that all data have been abstracted and coded correctly.

2. Reporting facilities shall assist LTR staff by compiling a list of cancer patients in the format required by the LTR and by obtaining the necessary medical and health records.

H. Follow-Up. Current follow-up, as defined in §8503, is required for all cancer cases. Health care facilities and providers will supply this information when requested.

I. External Linkages. LTR data may be linked with external databases in order to improve the accuracy and completeness of follow-up data or for research. All linkages shall be carried out in compliance with LTR confidentiality rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:11105.3(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:1298 (July 1998), amended by the LSU Health Sciences Center, Health Care Services Division, Tumor Registry, LR 30:2837 (December 2004), amended by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 35:2787 (December 2009), LR 39:3305 (December 2013), LR 44:

§8509. Confidentiality

A. R.S. 40:1105.6 and 1105.8 of Acts 1995, No. 1197, strengthen and enforce previous legislative provisions to ensure the confidentiality of patients, health care providers, and reporting facilities. These laws protect licensed health care providers and facilities that participate in the cancer registration program from liability. They also specify the confidentiality requirements of the Louisiana Tumor Registry.

B. Louisiana Tumor Registry policies and procedures comply with the standards of the Health Insurance and Portability and Accountability Act (HIPAA). The Office of Civil Rights has determined that releases of confidential data to state-mandated cancer registries do not require patient consent, since the registries serve as a public health authority.

C. LTR Responsibilities. The president or his or her designee shall take strict measures to ensure that all case-specific information is treated as confidential and privileged. All employees, consultants, and contractors of the Louisiana Tumor Registry and of its regional offices shall sign an "agreement to maintain confidentiality of data" each year, and these agreements shall be kept on file. Any employee who discloses confidential information through gross negligence or willful misconduct is subject to penalty under the law.

D. ...

E. Protection of Case-Specific Data Obtained by Special Morbidity and Mortality Studies and Other Research Studies

1. R.S. 40:3.1(A) through (H) and R.S. 40:1105.8(F) state that all confidential data such as records of interviews, questionnaires, reports, statements, notes, and memoranda that are procured or prepared by employees or agents of the Office of Public Health shall be used solely for statistical, scientific and medical research purposes. This applies also to data procured by employees or agents of the Louisiana Tumor Registry or organizations, including public or private college universities acting in collaboration with the Louisiana Tumor Registry in special cancer studies.

2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:1298 (July 1998), amended by the LSU Health Sciences Center, Health Care Services Division, Tumor Registry, LR 30:2838 (December 2004), amended by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 35:2789 (December 2009), LR 39:3305 (December 2013), LR 44:

§8511. Release of Information

A. - A.1. ...

2. Information that would potentially identify a patient or a health care provider or facility shall not be disclosed, except to treating, diagnosing, and follow-up facilities and providers or qualified investigators currently approved by both the LTR and the LSUHSC Institutional Review Board, in conformity of R.S. 40:1105.8.1

3. When collecting self-reported information from cancer patients, patient privacy will be protected by HIPAA-compliant procedures.

B. - C. ...

1. The LTR is authorized to collaborate with the National Cancer Institute, the Centers for Disease Control and Prevention, and other national and international cancer surveillance programs and organizations designated by the LTR, including but not limited to the North American Association of Central Cancer Registries and the International Agency for Research on Cancer, in providing cancer data and participating in cancer studies.

2. In addition, the LTR shall work closely with the LOPH in investigating cancer concerns, evaluating programs, and other cancer-related issues. This includes cooperating in the implementation of the program of cancer investigation and intervention provided for in R.S. 40:1105.8.1, if sufficient funding is available for this purpose. LOPH requests for case-specific data will require annual approval by the Institutional Review Board of the Louisiana State University Health Sciences Center-New Orleans (LSUHSC-New Orleans). In addition, the LOPH must comply with LTR confidentiality standards, and reports written for public release using registry data must be reviewed by the registry in advance.

3. The use of registry data by LOPH officials and Louisiana Cancer Prevention and Control Programs, who sign an annual agreement to maintain the confidentiality of registry data, shall be considered an in-house activity and shall be processed expeditiously.

D. Requests for Case-Specific LTR Incidence Data. Case-specific data may be released to qualified persons or organizations for the purposes of cancer prevention, control, and research. Such data do not include information collected for special studies or other research projects.

1. The LTR reserves the right to prioritize its responses to data requests.

2. Requests from researchers for case-specific LTR incidence data, including data linkages, must be submitted in writing and shall be reviewed and approved by the LTR Data Release Committee following the established policies of the Louisiana Tumor Registry. A detailed description of the policies and procedures for requesting Registry data can be obtained from the LTR website. These established policies include, but are not limited to, the following requirements:

a. approval from the LSUHSC-New Orleans Institutional Review Board and compliance with the LSUHSC-New Orleans HIPAA research policy as well as approval from the researcher's Institutional Review Board and compliance with that institution's HIPAA research policy;

b. signature of the LTR "agreement to maintain confidentiality of data" by all investigators who will have access to the data, agreeing to adhere to the LTR confidentiality provisions and prohibiting the disclosure of LTR data in any civil, criminal, administrative, or other proceeding;

c. provision of a copy of the complete protocol for the project;

d. completion of all requirements listed in the document on the LTR website;

e. notification of physician, if required, before contacting patients or their next-of-kin;

f. destruction or return of data once the research is completed.

3. LTR Research Committee. The research committee shall be coordinated by the director of the LTR or designee and may include, but not be limited to, the director of the LTR, and a qualified representative from each of the following entities: LSUHSC-New Orleans, OPH, and the La. Cancer and Lung Trust Fund Board. The committee will verify:

a. that the researchers are able to execute the proposal, in terms of both financial support and professional qualifications;

b. that the study has scientific and ethical merit;

c. that all appropriate confidentiality protections are in place; and

d. that appropriate consent will be obtained.

E. Requests for Aggregate Data

1. Data requested by the Louisiana Office of Public Health for responding to concerns about threats to public health shall receive priority in determining the order of processing requests.

2. Subject to the provisions of the Louisiana Public Records Act, R.S. 44:4.1 et seq., other requests for aggregate data shall be processed in the order of their receipt. The Registry shall respond to public requests in as timely a manner as resources permit, provided that these requests meet certain requirements in conformity with R.S. 40:3.1(A) and (F) and R.S. 40:1108.8(F) et seq.

3. Those requesting data may be asked to reimburse the LTR for actual costs for compiling and providing data. In no event shall the LTR be obligated to perform original work to create data not currently in existence.

4. According to R.S. 40:1105.8.1 The census tract is the smallest geographic area for which aggregate data may be released, if it does not violate both the suppression rule of the United States Cancer Statistics Program, and HIPAA. LTR may combined years of data to overcome these rules. IRB approval is required when requesting data for smaller geographic areas or areas that are restricted by the aforementioned rules and laws, except for mandated public health investigations. If a data request is denied by the IRB, the IRB shall provide written notice of the reason why to the requestor electronically or via mail.

F. Annual Report. A statistical report shall be prepared and made available on the LTR website. This report will also be submitted to the president of the LSU system, LSUHSC-New Orleans, LSUHSC-Shreveport, the La. Cancer and Lung Trust Fund Board, participating hospitals, the governor, the speaker of the House of Representatives, the president of the Senate, the Legislative Committees on Health and Welfare, and the governing body of each parish.

1. The LTR shall have a mechanism on its website which individuals may elect to receive notifications and the annual report in electronic form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:1298 (July 1998), amended by the LSU Health Louisiana Register Vol. 35, No. 12 December 20, 2009 Sciences Center, Health Care Services Division, Tumor Registry, LR 30:2839 (December 2004), amended by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 35:2789 (December 2009), LR 39:3305 (December 2013), LR 44:

§8512. Patient-Reported Data

A. The LTR is authorized to contact cancer patients to obtain information on self-reported family history of cancer, health-related quality of life, and other related topics to support patient-centered cancer care. Participation of cancer patients is voluntary. The LTR shall use appropriate data collection means to minimize the burden on participants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 44:

§8513. Interstate Exchange of Data

A. Because cancer patients may be diagnosed or treated in other states, the Louisiana Tumor Registry is authorized to sign agreements with other states to acquire cancer data concerning Louisiana residents and, in return, to provide those states with cancer data relating to their residents. Each signatory state shall agree in writing to follow standard procedures to safeguard patient confidentiality and ensure data security.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 44:

§8514. Cancer Care Coordination

A. The LTR is authorized to work collaboratively with the Louisiana Department of Health and the Louisiana Cancer Prevention and Control Programs to provide information to cancer patients regarding access to clinical trials and other care services for the statewide cancer care coordination program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1105.3(7).

HISTORICAL NOTE: Promulgated by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR 44:

§8515. Contact Information for the Louisiana Tumor Registry

Louisiana Tumor Registry
2020 Gravier St., Third Floor
New Orleans, LA 70112
Phone: (504) 568-5757
Fax: (504) 568-5800
Website: <http://sph.lsuhscc.edu/louisiana-tumor-registry/>

AUTHORITY NOTE: Promulgated in accordance with R.S.40:1105.3(7).

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of Preventive and Public Health Services, LR 13:246 (April 1987), amended by the Louisiana State University Medical Center, Office of the Chancellor, LR 24:1298 (July 1998), amended by the LSU Health Sciences Center, Health Care Services Division, Tumor Registry, LR 30:2840 (December 2004), amended by LSU System, Louisiana State University Health Sciences Center, Louisiana Tumor Registry, LR35:2790 (December 2009), LR 39:3305 (December 2013), LR 44:

Family Impact Statement

The proposed rules of the Louisiana Tumor Registry should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, there should be no known or foreseeable effect on:

1. the stability of the family;
2. the authority and rights of parents regarding the education and supervision of their children;
3. the functioning of the family;
4. a family's earnings and budget;
5. the behavior and personal responsibility of children; or
6. the family's ability or that of the local government to perform the function as contained in the proposed Rule.

Poverty Impact Statement

The proposed changes to the Louisiana Tumor Registry rules will have no effect on:

1. household income, assets, and financial security;
2. early childhood development and preschool through postsecondary education development;
3. employment and workforce development;
4. taxes and tax credits;
5. child and dependent care, housing, health care, nutrition, transportation and utilities assistance.

Public Comments

All interested persons are invited to submit written comments on the proposed regulations. Such comments must be received no later than November 30, 2017 at 4:30 p.m. and should be sent to Aubree Thelen, Louisiana Tumor

Registry, 2020 Gravier St., Third Floor, New Orleans, LA 70112. Comments may also be faxed to (504) 568-5800, phoned to (504) 568-5851 or (504) 568-5757, or e-mailed to athele@lsuhsc.edu.

Xiao-Cheng Wu, MD, MPH, CTR
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Tumor Registry

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes may result in additional costs for state and local governmental health care providers to the extent they do not report the required information and specimens to the LA Tumor Registry (LTR) and are fined by the Registry as a result. The amount that governmental health care providers may be fined is \$100 per day after the first month of non-compliance. The total amount a provider may be fined is \$5,000.

The proposed rule changes will result in a one-time expenditure of \$1,000 for the Louisiana Tumor Registry (LTR) in FY 18, as well as marginal administrative costs such as postage associated with implementation of the proposed rule changes in FY 18 and subsequent fiscal years. Expenditures associated with the proposed rule changes will be funded utilizing existing personnel and budget authority.

The proposed rule changes require the LSUHSC-New Orleans' Institutional Review Board (IRB) to give written notice to persons requesting data in the event the Board denies their request, which may have associated mailing costs. In addition, the LTR Research Committee is expanded to include more qualified members, which will not carry additional costs because members do not receive mileage, per diem, or compensation, and most meetings are conducted via teleconference. The proposed rule changes further include provisions that LTR's annual report be sent to various governmental entities and the governing body of each parish, as well as providing for a mechanism for individuals to be notified when the report is published on the LTR website, which have no associated costs because the report will be sent electronically. Lastly, LTR's participation in the cancer care coordination program and the collection of patient-reported data are within the Registry's current mission and scope and do not represent additional costs.

Additional revisions in the proposed rule changes include the clarification of required diagnostic material, fines for non-compliant facilities, and an updated address for the LTR website. Furthermore, the proposed rule changes update statute numbering and alignment associated with Acts 373 of the 2017 Regular Legislative Session. Other changes associated within Act 373 of the 2017 Regular Session include requiring LTR, within the confines of federal privacy laws, to provide diagnostic, treatment and follow-up information for a patient at the request of a physician or medical facility. The Act also requires LTR to continue to cooperate with the Office of Public Health within the LA Department of Health in the implementation of a program of cancer investigation and intervention and, if funding is available, on evaluation of programs. There has no been an appropriation made for the purpose of evaluation, but the other requirements of Act 373 will be absorbed utilizing the LTR's existing resources. Act 373 also changes the smallest level of data released by the LTR to the census tract, if it does not violate suppression rules or federal privacy laws.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes include language allowing for fines in the event a health care provider does not report required information and specimens to the LTR, which may increase revenues for the Registry. The amount that health care providers may be fined is \$100 per day after the first month of non-compliance. The total amount a provider may be fined is \$5,000. The amount of fine revenue collected is dependent upon the number of health care providers not reporting information and specimens to the Registry, which is unknown. As a result, the amount of potential revenue that may be collected is unknown.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes may result in additional costs for non-governmental health care providers to the extent they do not report the required information and specimens to the LTR and the Registry fines them. The amount that non-governmental health care providers may be fined is \$100 per day after the first month of non-compliance. The total amount a provider may be fined is \$5,000. Furthermore, non-governmental health care providers may have additional marginal costs for the delivery of desired specimens to the LTR to the extent the Registry requests them.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The proposed rule changes will not affect competition or employment.

Xiao-Cheng Wu, MD
Director
1710#066

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Public Safety and Corrections
Office of State Police**

Breath and Blood Alcohol Analysis Methods and
Techniques and Collection, Submission, Receipt,
Identification, Storage and Disposal of DNA Samples
(LAC 55:I.Chapters 5 and 27)

In accordance with the provisions of R.S. 32:663 relative to the authority of Louisiana Department of Public Safety to promulgate and enforce rules pursuant to approval of testing methods, the Louisiana Department of Public Safety, Louisiana State Police hereby proposes to amend rules under LAC 55:I.553, 555, 557, 559, 563, 579 and 581 in relation to breath and blood alcohol analysis to remove individual instrument and analyst certification and responsibility of crime lab certification from the Louisiana State Police crime lab because now all crime labs are accredited and the certification program is no longer necessary. It also removes individual certification, adds two blood alcohol instruments to approved methods, removes specific blood collection kit manufacturers and item numbers, allows testing kits to be stored at room temperature or under refrigeration, removes written approval for permitted crime lab procedures, removes certification applications to Louisiana State Police, removes requirement of test samples, removes housing proficiency testing records at Louisiana State Police crime lab, removes individual certifications for analysts, and addresses the storage duration. Also to amend rules under

LAC 55:I.2702, 2703, 2721, 2722, and 2725 in relation to collection of DNA samples adding a definition, allows the use of an AFIS printout, allows for DDIC completion, provides collections be obtained in accordance with kit instructions, and provides for a specimen envelope. Modification is needed to these rules to keep up with overall processing changes in the AFIS booking process. It clarifies the different DNA collection processes for arrestees and convicted offenders.

Title 55

PUBLIC SAFETY

Part I. State Police

**Chapter 5. Breath and Blood Alcohol Analysis
Methods and Techniques**

Subchapter B. Analysis of Blood

**§553. Certification; Renewal of Certification;
Suspension, Revocation or Cancellation**

A. - C. ...

D. All persons deemed qualified to conduct blood alcohol analysis by their respective laboratory when that laboratory has been accredited and permitted in blood alcohol analysis by the terms set forth in the Louisiana Statutory Criminal Law and Procedure, R.S. 32:663, are not required to seek individual certification.

E. Failure to adhere to any of the rules and regulations set forth herein upon establishment of said failure may result in suspension, revocation or cancellation of the certification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 6:660 (November 1980), amended by the Department of Public Safety and Corrections, Office of State Police, LR 11:259 (March 1985), LR 14:360 (June 1988), LR 17:675 (July 1991), repromulgated LR 17:798 (August 1991), amended LR 44:

§555. Certified Techniques of Analyst

A. - B.1. ...

2. gas chromatography—direct injection with internal standard;

3. gas chromatography/mass spectrometry-headspace sampling with internal standard;

4. gas chromatography/mass spectrometry-direct injection with internal standard.

C. - F.4. ...

G. Blood drawn for the purposes of determining the alcoholic content therein shall have been taken with the contents of a sealed blood collection kit approved by the Louisiana State Police crime laboratory. Such kits will be made available to all law enforcement agencies by the Louisiana State Police.

1. All kits approved by the Louisiana State Police crime laboratory contain the necessary preservative to insure stability of the sample as provided by the manufacturer and contain no ethyl alcohol. Each approved kit must be manufactured specifically for blood alcohol determinations in living or post-mortem subjects.

2. Following analysis, the evidence will be stored for a period of one year at room temperature or under refrigeration by either the testing facility or the submitting agency and then may be destroyed. Evidence collected subsequent to law enforcement investigations and/or search warrant executions are subject to the aforementioned storage period and destruction policy. Additional storage duration

and/or destruction criteria may be implemented by the testing facility or submitting agency.

3. ...

H. Each laboratory performing blood alcohol analysis must either be permitted by terms set forth in the Louisiana Statutory Criminal Law and Procedure, R.S. 32:663, or submit to the Louisiana State Police crime laboratory for approval of written procedures with regard to the following minimum standards.

1. Analysis must be performed on a gas chromatograph with or without a mass spectrometer.

2. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 6:663 (November 1980), amended by the Department of Public Safety and Corrections, Office of State Police, LR 11:259 (March 1985), LR 14:360 (June 1988), LR 17:675 (July 1991), repromulgated LR 17:798 (August 1991), amended LR 26:2624 (November 2000), LR 37:1416 (May 2011), LR 44:

§557. Maintenance, Repair and Inspection

A. Maintenance, repair and inspection of a gas chromatograph with or without a mass spectrometer may be performed by certified blood alcohol analysts. This may include but not be limited to cleaning, replacing septums, changing columns, checking gases and flow rates, checking "O" rings and air filters, adjusting temperature settings and any other routine checks that are deemed necessary for accurate performance. A certified blood alcohol analyst may perform diagnostic testing, as instructed by a service engineer from the manufacturer. Following each maintenance or repair, inspection of the instrument shall include running a known alcohol standard to insure that the instrument is in proper working order. The gas chromatograph shall be inspected and certified by the department at least every 180 days and the certificate issued shall be proof as to the certification and accuracy of the instrument unless the laboratory is permitted by the terms set forth in the Louisiana Statutory Criminal Law and Procedure, R.S. 32:663. A log shall be maintained on each gas chromatograph and all inspections and certifications noted therein.

B. - C. ...

D. the department shall formulate a program for the inspection and certification of all gas chromatographs with or without a mass spectrometer being used for blood alcohol analyses in this state by laboratories not permitted by terms set forth in the Louisiana Statutory Criminal Law and Procedure, R.S. 32:663. The completion of the initial inspection and certification shall be on or before January 20, 1992; however, the lack of certification prior to January 20, 1992 shall not be grounds for the disqualification of the accuracy or authenticity of the results obtained from the use of any such gas chromatograph with or without a mass spectrometer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:361 (June 1988), amended LR 17:676 (July 1991), repromulgated LR 17:799 (August 1991), amended LR 44:

§559. Certification Testing

A. Certification testing is not required for any persons deemed qualified to conduct blood alcohol analysis by their respective laboratory when the laboratory has been accredited and permitted in blood alcohol analysis by the terms set forth in the Louisiana Statutory Criminal Law and Procedure, R.S. 32:663.

B. An applicant for certification to perform blood alcohol analysis shall submit for certification testing conducted by the Louisiana State Police crime laboratory.

1. Applicant shall perform analysis on four unknown samples of whole blood at least three of which shall contain ethyl alcohol percentages of between 0.01 grams and 0.40 grams percent. The fourth sample may contain ethyl alcohol within previously stated values, other volatile compounds or a sample free of any volatile compounds.

2. If samples are prepared in-house, the stock solution used to prepare certification testing shall be from a sealed bottle of 200 proof pure anhydrous grade ethyl alcohol diluted to a concentration of 5g/100ml with deionized water. This will then be diluted further with alcohol-free blood to obtain concentrations within the range listed in the previous Section.

3. A sample of each unknown shall be tested and retained by the Louisiana State Police crime laboratory until applicant is certified.

4. The samples will then be sent to each applicant for alcohol analysis.

5. In lieu of Paragraphs 2-4, the applicant may utilize unknown samples purchased from an approved proficiency test provider. The individual laboratory shall possess approval criteria based on their individual laboratory's accreditation requirements.

6. The applicant shall submit the results of analysis, the completed application, the procedure used for analysis, and all paperwork generated in the process of determining the blood alcohol values to the Louisiana State Police crime laboratory.

7. Results must be within a value of +10 percent of known values. In addition, paperwork will be reviewed to determine that all procedures were in compliance with these rules and regulations.

8. After review of all paperwork and if results are within accepted ranges, the applicant will be certified as a blood alcohol analyst and will be issued a blood alcohol analyst certificate. This certificate will be valid for a period of two years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:361 (June 1988), amended LR 17:676 (July 1991), repromulgated LR 17:799 (August 1991), amended LR 44:

§563. Proficiency Testing

A. Each laboratory providing blood alcohol analysis is to participate in a regional or national proficiency testing program at least twice a year or a proficiency testing program conducted by the State Police crime laboratory, which participation shall be certified for each such laboratory. A copy of the results shall either be forwarded to the State Police crime laboratory in Baton Rouge, Louisiana

within 30 days of receipt by each laboratory or be retained in the proficiency test records for each authorized person by their respective laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 14:361 (June 1988), amended LR 17:677 (July 1991), repromulgated LR 17:800 (August 1991), amended LR 44:

Subchapter C. Analysis of Blood and Urine for Controlled Dangerous Substances

§579. Certification

A. - C. ...

D. All persons deemed authorized to conduct toxicological analysis on bodily fluids by their respective laboratory when that laboratory has been accredited and permitted in toxicological analysis by the terms set forth in the Louisiana Statutory Criminal Law and Procedure, R.S. 32:663, are not required to seek individual certification.

E. Failure to adhere to any of the rules and regulations set forth herein or to maintain any qualification, as determined by the director of the crime laboratory, may result in suspension, revocation, or cancellation of the certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 26:2625 (November 2000), amended LR 44:

§581. Receiving and Sampling of Evidence

A. Evidence submitted for toxicological examination shall be labeled for identification, securely sealed, and submitted in a container appropriate for shipping and maintaining security. They shall have been taken with the contents of a blood and/or urine collection kit approved by the Louisiana State Police crime laboratory. Such kits shall be made available to all law enforcement agencies through the Louisiana State Police.

B. - D. ...

E. Following analysis, the evidence will be stored for a period of one year under refrigeration either at the testing facility or by the submitting agency. After the one-year storage period, the evidence may be destroyed. Evidence collected subsequent to law enforcement investigations and/or search warrant executions are subject to the aforementioned storage period and destruction policy. Additional storage duration and/or destruction criteria may be implemented by the testing facility or submitting agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 32:663.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 26:2625 (November 2000), amended LR 37:1416 (May 2011), LR 44:

Chapter 27. Collection, Submission, Receipt, Identification, Storage and Disposal of DNA Samples

Subchapter A. Collection of DNA Samples

§2702. Definitions

* * *

Biological Sample—biological evidence of any nature that is utilized to conduct DNA analysis.

CAJUN—the Corrections and Justice Unified Network operated by the Department of Public Safety and Corrections.

* * *

DNA Database—the DNA identification record system maintained and administered by the state CODIS administrator.

* * *

DNA Database Buccal Collection Kit—the kit approved by the department for the collection of DNA buccal samples.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:205 (February 2001), repromulgated LR 27:1701 (October 2001), amended LR 37:1417 (May 2011), LR 44:

§2703. Collection, Submission, and Identification of DNA Samples for Convicted Offenders

A. - A.3. ...

4. The collector may utilize an AFIS printout (livescan generated), which contains the identifying information of the convicted offender when obtaining a sample.

5. In the event that a manual collection is completed (non-livescan process), the collector shall complete the DDIC which contains the identifying information of the collected offender when obtaining a sample. All information shall be provided. Printed name, date and signature of the person collecting the sample are required. A fingerprint is obtained as positive identification of the offender. Samples submitted with incomplete information may require recollection.

6. Biological samples shall be obtained according to the instructions contained in the kit.

7. The specimen envelope containing the biological sample and the DDIC or AFIS printout shall be placed in the mailing envelope provided. The mailing envelope flap shall be sealed.

8. If a blood collection kit is used, finger stick blood samples shall be obtained using recognized and approved medical procedures.

9. In the event a convicted offender resists the taking of the DNA sample and the collector may use reasonable force in accordance with R.S. 15:601-620, the collector may collect any type of biological sample approved by the Louisiana State Police crime laboratory. The following types of biological sample collections are hereby approved for these instances:

- i. blood stain from finger prick on FTA card;
- ii. buccal swab;
- iii. phlebotomy draw.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:206 (February 2001), repromulgated LR 27:1702 (October 2001), amended LR 30:271 (February 2004), LR 37:1418 (May 2011), LR 44:

§2705. Record Keeping of DNA Samples for Convicted Offenders

A. The individual who collects each DNA sample for a submitting agency shall complete a list of every DNA sample collected for each day of collection. Any failed attempts to collect blood from an offender and the reason for the failure (e.g., refusal of offender to submit, failure to keep scheduled appointment) shall also be indicated. The list will

include the following information: the kit number, the offender's name, the name of the person collecting the sample and the submitting agency together with any additional data which the crime laboratory deems necessary. This information shall be retained for record within a designated area at the submitting agency location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 27:207 (February 2001), repromulgated LR 27:1703 (October 2001), amended LR 30:271 (February 2004), LR 37:1419 (May 2011), LR 44:

Subchapter B. Arrestees

§2721. Definitions

* * *

DNA Database—the DNA identification record system maintained and administered by the State CODIS Administrator.

* * *

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 28:2369 (November 2002), amended LR 37:1419 (May 2011), LR 44:

§2722. Collection, Submission, and Identification of DNA Samples for Arrestees

A. - A.4.d. ...

5. In the event that a manual collection form is used, all information shall be provided. Printed name, date and signature of the person collecting the sample is required. A fingerprint is obtained as positive identification of the offender. Samples submitted with incomplete information may require recollection.

6. Buccal biological samples shall be obtained according to the instructions contained in the kit.

7. The specimen envelope containing the biological sample and the AFIS printout shall be placed in the mailing envelope provided. The mailing envelope flap shall be sealed.

8. In the event an arrestee resists the taking of the DNA sample, the collector may use reasonable force in accordance with R.S. 15:601-620.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety and Corrections, Office of State Police, LR 28:2369 (November 2002), amended LR 37:1419 (May 2011), LR 44:

§2725. Record Keeping of DNA Samples for Arrestees

A. The individual who collects each DNA sample for a submitting agency shall complete a list of every DNA sample collected for each day of collection. Any failed attempts to collect a sample from an arrestee and the reason for the failure (e.g., refusal of arrestee to submit) shall also be indicated. The list will include the following information: the kit number, the arrestee's name, the name of the person collecting the sample and the submitting agency together with any additional data which the crime laboratory deems necessary. This information shall be retained for record within a designated area at the submitting agency location.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:611.

HISTORICAL NOTE: Promulgated by the Department of Public Safety, Office of State Police, LR 28:2370 (November 2002), amended LR 30:271 (February 2004), LR 37:1420 (May 2011), LR 44:

Family Impact Statement

1. The Effect of this Rule on the Stability of the Family. This Rule will have no effect on the stability of the family.

2. The Effect of this Rule on the Authority and Rights of Parents Regarding the Education and Supervision of their Children. This Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. The Effect of this Rule on the Functioning of the Family. This Rule will have no effect on the functioning of the family.

4. The Effect of this Rule on Family Earnings and Family Budget. This Rule will have no effect on family earning and family budget.

5. The Effect of this Rule on the Behavior and Personal Responsibility of Children. This Rule will have no effect on the behavior and personal responsibility of children.

6. The Effect of this Rule on the Ability of the Family or Local Government to Perform the Function as Contained in the Proposed Rules. This Rule will have no effect on the ability of the family or local government to perform the function as contained in the proposed Rules.

Poverty Impact Statement

The proposed Rule should not have any known or foreseeable impact on any child, individual or family as defined by R.S. 49:973(B). In particular, there should be no known or foreseeable effect on:

1. the effect on household income, assets, and financial security;

2. the effect on early childhood development and preschool through postsecondary education development;

3. the effect on employment and workforce development;

4. the effect on taxes and tax credits;

5. the effect on child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the effect on the staffing level requirements or qualifications required to provide the same level of service;

2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or

3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to Paeton L. Burkett, Attorney, Louisiana State Police, 7979 Independence Blvd., Suite 307, Baton Rouge, LA 70806. She is responsible for responding to inquiries regarding this proposed Rule.

Public Hearing

Requests for a public hearing must be submitted in writing either via email or written correspondence. Requests for a public hearing shall be sent to Paeton.burkett@la.gov or to Paeton L. Burkett, Attorney, Louisiana State Police, 7979 Independence Blvd., Suite 307, Baton Rouge, LA 70806. The deadline for submitting a request for public hearing is November 10, 2017. All requests for a public hearing sent via written correspondence must be postmarked by November 10, 2017.

Jason Starnes
Chief Administrative Officer

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Breath and Blood Alcohol Analysis Methods and Techniques and Collection, Submission, Receipt, Identification, Storage and Disposal of DNA Samples

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no implementation costs or savings to state or local governmental units as a result of the proposed rule change. The proposed rule in relation to Breath and Blood Alcohol Analysis codifies current practice in regard to individual instrument and analyst certification. Under the new rules, individual instruments and analysts would not require certification if the employing crime lab is accredited and permitted by the Department of Public Safety in accordance with R.S. 32:663. The proposed changes also remove individual certification, add two blood alcohol instruments to approved methods, remove certification applications, remove requirement of test samples, remove housing proficiency testing records, remove individual certifications for analysts, and address the storage duration. The proposed rule changes in relation to collection of DNA samples add a definition, allow the use of an Automated Fingerprint Identification system (AFIS) printout, allow for DNA Database Information Card (DDIC) completion, provide that collections be obtained in accordance with kit instructions, and provide for a specimen envelope.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes will have no effect on revenue collections of state or local governmentla units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There is no cost or economic benefit to directly affected persons or non-governmental groups as a result of the proposed rule change.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will no effect on competition and employment as the proposed rule applies to all code enforcement officers and to all persons and authorities having jurisdiction.

Jason Starnes
Chief Administrative Officer
1710#032

Evan Brasseaux
Staff Director
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Office of Alcohol and Tobacco Control

Direct Shipment of Sparkling Wine or Still Wine (LAC 55:VII.335)

Under the authority of R.S. 26:359 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Office of Alcohol and Tobacco Control proposes to enact an amendment to LAC 55.VII.335 relative to the direct shipment of sparkling and still wine by manufacturers, wine producers, or retailers to consumers in Louisiana and relative to registration by transporters of sparkling and still wine to consumers in Louisiana that would delete the requirement to place permit and license numbers directly on shipping package and instead provide for same to be included on packaging invoice.

The proposed adoption of the above-referenced amended Rule is offered under the authority delegated by R.S. 26:359 to provide for reporting requirements of all manufacturers, wine producers, or retailers who ship wine directly to consumers in Louisiana and for reporting requirements of transporters of sparkling and still wine to consumers in Louisiana.

Title 55

PUBLIC SAFETY

Part VII. Alcohol and Tobacco Control

Subpart 1. Beer and Liquor

Chapter 3. Liquor Credit Regulations

§335. Direct Shipment of Sparkling Wine or Still Wine to Consumers in Louisiana

A. - F. ...

G. Identification of Shipments. All shipments made by an authorized manufacturer or retailer of sparkling wine or still wines that are shipped directly to any consumer in Louisiana shall be identified as follows.

1. - 2. ...

3. The manufacturer's, wine producer's or retailer's Louisiana ATC permit number and the manufacturer's, wine producer's or retailer's out-of-state license number, if domiciled outside of Louisiana, shall be included on the packaging invoice.

G4. - K. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:541.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Revenue, Office of Alcohol and Tobacco Control, LR 43:1556 (August 2017), amended LR 44:

Family Impact Statement

The proposed rulemaking has no known impact on family formation, stability, or autonomy, as described in R.S. 49:972.

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Small Business Analysis

The proposed rulemaking will have no adverse impact on small businesses as described in R.S. 49:965.2 et seq.

Provider Impact Statement

The proposed rulemaking has no known or foreseeable impact on providers as defined by HCR 170 of 2014 Regular Legislative Session.

Public Comments

Interested persons may submit written comments until November 10, 2017, to Commissioner Juana Marine-Lombard, Office of Alcohol and Tobacco Control, P.O. Box 66404, Baton Rouge, LA 70896 or at legal.department@atc.la.gov.

Juana Marine-Lombard
Commissioner

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Direct Shipment of Sparkling Wine or Still Wine

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be no direct costs or savings to state or local governmental units due to the implementation of this proposed rule.

Promulgation of this proposed rule provides for the amendment of requirements for the direct shipment of sparkling wine or still wine in accordance with the mandate of Act 637 of the 2016 Regular Session of the Louisiana Legislature and La R.S. 26:359 as amended therein by omitting requirement for direct shippers of sparkling or still wine to place their permit or license number directly on the front of the shipping package and requiring them to instead include same on package invoice.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

This proposed rule amendment will not affect revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule amendment has been requested by and may modestly reduce processing and shipping related costs for industry members engaging in the direct shipment of sparkling wine or still wine by omitting requirement to place their permit or license number directly on the front of the shipping package and requiring them to instead include same on package invoice.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

This proposed rule amendment will not affect competition and employment.

Juana Marine-Lombard
Commissioner
1710#015

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Revenue Policy Services Division

Criminal History Record Checks for Access to Federal Tax Information (LAC 61:I.103)

Under the authority of and in accordance with R.S. 15:587.5, 47:1504.1, 47:1511, and the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Policy Services Division, through this Notice of Intent, signals its intention to adopt a Rule to provide for the principles and procedures to be utilized in the fingerprinting and criminal history record checks of current and prospective employees, contractors and subcontractors with access to federal tax information. Fingerprinting and criminal history record checks have been mandated by Act 147 of the 2017 Regular Session, which is now R.S. 15:587.5, and the Department of Revenue has a need for a Rule to set forth clarification and detail regarding the factors the Department of Revenue will use to comply with the statute and to determine suitability to access federal tax information.

Title 61

REVENUE AND TAXATION

Part I. Taxes Collected and Administered by the Secretary of Revenue

Chapter 1. Office of the Secretary

§103. Criminal History Records Checks for Access to Federal Tax Information

A. Introduction and Purpose

1. Safeguarding federal tax information (FTI) is critically important to the continuous protection of taxpayer confidentiality as required by the IRS statute found at 26 USCS 6103(p)(4) and its supplemental publication 1075. The Department of Revenue will conduct fingerprinting, along with national, state and local criminal history record checks on all individuals handling and those who may handle FTI in order to ensure the Department of Revenue is making a complete effort to protect the sensitive information of all taxpayers and complying with federal confidentiality laws and background investigation standards. The criminal history record checks will be used to determine the suitability of individuals to access FTI in performance of their job duties or services for the Department of Revenue. In determining suitability, the Department of Revenue will use information obtained through the criminal history record check to identify trends of behavior that may not rise to the criteria for reporting to the FBI or state database, but are a good source of information about the individual.

B. Applicability

1. This regulation applies to all current employees, prospective employees, contractors and subcontractors of the Department of Revenue.

C. Definitions

Criminal History Record Check—a review of an individual’s criminal history on the national level through the use of fingerprints sent to the Federal Bureau of Investigation (FBI), the state level, through the use of fingerprints sent to the Louisiana Bureau of Criminal Identification and Information and the local level, through various local law enforcement agencies.

Department—the Louisiana Department of Revenue.

Federal Tax Information (FTI)—consists of federal tax returns and return information (and information derived from it) that is in the department’s possession or control which is covered by the confidentiality protections of the *Internal Revenue Code* and subject to its safeguarding requirements, including IRS oversight.

FTI Suitable (no reports)—an employee, contractor or subcontractor who is suitable to access federal tax information in the performance of his duties, function or service at the department.

FTI Suitable (with reports)—an employee, contractor or subcontractor where information was received during the criminal history record check process that indicated there were criminal cases, convictions, arrests or serious misconduct but a determination was made based upon compelling reasons, to allow access to FTI in the performance of his duties, function or service at the department.

FTI Unsuitable—an employee, contractor or subcontractor who is not suitable to access federal tax information in the performance of his duties, function or service at the department.

D. General Provisions for Criminal History Record Checks

1. Every current employee, prospective employee, contractor or subcontractor identified as having or who will have access to FTI, shall sign a written authorization to have the fingerprinting and criminal history record check performed.

2. Criminal history record checks will include, at minimum, a national check through the use of fingerprints that are sent to the FBI, a state check, through the use of fingerprints sent to the Louisiana Bureau of Criminal Identification and Information along with a local check, through various local law enforcement agencies.

3. Criminal history record checks will be completed, at minimum, every 10 years.

4. Criminal history record checks will only be done on prospective employees after a conditional offer of employment is signed by the prospective employee.

5. Background checks on prospective contractors must be done prior to the contractor beginning work on the contract.

E. Suitability Standards

1. Whether a current or prospective employee, contractor or subcontractor is deemed to be “FTI suitable (no reports),” “FTI suitable (with reports),” or “FTI unsuitable” is determined by the factors contained in the following table.

Designation	Criminal History Record Check Results
FTI Suitable (No Reports)	No reports of open criminal cases, convictions, arrests or serious misconduct
FTI Suitable (With Reports)	• No reports of open criminal cases, convictions, arrests or serious misconduct with relevance to the

Designation	Criminal History Record Check Results
	<p>duties of the position or access to FTI</p> <ul style="list-style-type: none"> • Reports of open criminal cases, convictions, arrests or serious misconduct relevant to the duties of the position or access to FTI; but, compelling mitigating documentation has been provided • Reports of criminal cases, convictions, arrests or serious misconduct that occurred 10 or more years prior to the date of the criminal history record check <ul style="list-style-type: none"> - The criminal case, conviction, arrest or serious misconduct cannot be one or of the nature discussed in the FTI Unsuitable category. - The current or prospective employee, contractor and/or subcontractor shall submit a detailed explanation. - The detailed explanation will be reviewed to determine FTI suitability.
FTI Unsuitable	<p>Reports of criminal cases, convictions, arrests or serious misconduct that includes but is not limited to:</p> <ul style="list-style-type: none"> • Misappropriation Crimes* • Computer Related Crimes* • Offenses Affecting Organized Government, subparts B through F* • Tax, Alcohol Beverage, Tobacco or Charitable Gaming offenses where the federal or state statute exposes the offender to a penalty of imprisonment, with or without hard labor <ul style="list-style-type: none"> - The asterisk (*) indicates a specific category of various related crimes that are listed in Title 14 of the Louisiana Revised Statutes. - Compelling or mitigating documentation must be provided to show the offense is irrelevant to FTI suitability.

2. Any criminal history record check that does not result in a determination of FTI suitable (no reports) will be reviewed on a case by case basis.

3. The case by case assessment of all open criminal cases, convictions, arrests, or reports of misconduct shall take into consideration all the items/factors below:

- the nature of the offense;
- the relation of the offense to the duties of the employee, contractor or subcontractor;
- any aggravating or mitigating circumstances, including the passage of time; and
- any evidence of rehabilitation of the subject or the lack thereof.

F. Impact of Suitability Determination

1. Prospective and current employees as well as contractors and subcontractors who have been deemed FTI suitable (no reports) or FTI suitable (with reports) will be able to exercise one of the options below that is applicable to their status:

- continue to or be allowed to access FTI in the performance of job duties;
- continue to or be allowed to access FTI in the performance of job duties with special restrictions or caveats; or
- be considered for a vacant position with FTI access.

2. If a current or prospective employee, contractor or subcontractor has been deemed FTI unsuitable, the department will exercise one of the options below:

- access or use of FTI will immediately be denied, suspended or prevented;
- the job offer may be rescinded;
- the contract may be terminated; or

d. the contractor or subcontractor's employee may be removed or prohibited from performing work on the contract.

3. A determination of FTI unsuitable may be appealed using the procedures outlined in Subsection G of this Section.

4. A successful appeal is the only mechanism in which the impact of a FTI unsuitable determination can be avoided.

G. Appeal Procedures

1. In the event the criminal history record check reveals information that leads to a determination of FTI unsuitable for a current or prospective department employee, contractor or subcontractor, the impacted person will be notified. This notification will also inform the impacted person of their right to challenge the accuracy of the criminal history record check.

2. The impacted person will have 30 days to present documentation to refute or mitigate the determination.

3. The department will review the documentation and notify the impacted person of its determination. The department may also use this information to request a new or updated criminal history record check, if allowed by the national, state and/or local law enforcement agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 15:587.5, R.S. 47:1504.1 and R.S. 47:1511

HISTORICAL NOTE: Promulgated by the Department of Revenue, Policy Services Division, LR 44:

Family Impact Statement

This Family Impact Statement is provided as required by Act 1183 of the 1999 Regular Session of the Louisiana Legislature.

1. Implementation of this proposed Rule will have no effect on the stability of the family.

2. Implementation of this proposed Rule will have no effect on the authority and rights of parents regarding the education and supervision of their children.

3. Implementation of this proposed Rule will have no effect on the functioning of the family.

4. Implementation of this proposed Rule will have no effect on the behavior and personal responsibility of children.

5. Implementation of this proposed Rule will have no effect on the ability of the family or a local government to perform this function.

Poverty Impact Statement

The proposed Rule will have no known impact on poverty as described in R.S. 49:973.

Provider Impact Statement

The proposed Rule will impact the provider in the following manner.

1. The proposed Rule may require the department to hire two additional "when actually employed" (WAE) human resource analysts for approximately three months in order to process the high volume of criminal history record checks that will need to be conducted on current and prospective employees, contractors and subcontractors along with providing the same level of service.

2. The department anticipates having to provide for fingerprinting and criminal history record checks on approximately 705 employees at a cost of approximately \$33,840 and on approximately 132 new hires at a cost of \$6,336, resulting in a total cost of \$40,176. The cost of the additional WAE human resource analysts is estimated to be

\$19,200. The department will bear indeterminable, variable costs related to employees and prospective employees who submit fingerprints at local law enforcement agencies that can charge up to \$15. The department will incur these costs in order to provide the same level of service while conducting and processing the necessary criminal history record checks.

3. With the addition of two WAE human resource analysts, the department should have no problem providing the same level of service while conducting and processing the necessary criminal history record checks.

Public Comments

Interested persons may submit written data, views, arguments, or comments regarding this proposed Rule to Mia Strong, Attorney, Office of the Secretary, by mail to P.O. Box 66258, Baton Rouge, LA 70896 or by fax to (225) 219-2708. All comments must be received no later than 5 p.m., November 27, 2017.

Public Hearing

A public hearing will be held on November 29, 2017 at 1:30 p.m. in the River Room on the seventh floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802.

Kimberly Lewis Robinson
Secretary

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Criminal History Record Checks for Access to Federal Tax Information

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

There will be a one-time implementation cost of approximately \$60,000 plus an indeterminable cost for local criminal history checks in FY 18 and a recurring marginal but indeterminable cost in subsequent fiscal years as a result of the proposed rule.

The proposed rule requires the Louisiana Department of Revenue (LDR) to perform local, state, and national criminal history record checks on current and prospective employees, contractors and subcontractors that have access to federal tax information (FTI). Implementation costs for FY 18 are estimated at \$40,176 for the cost of state and federal criminal history record checks, \$19,200 for temporary personnel to process the initial checks for current employees and an indeterminable amount associated with local criminal history record checks. LDR's budget for FY 18 includes \$40,000 for criminal history record checks. Implementation cost amounts above the budgeted amount for the current fiscal year will come out of LDR's current year budget allocation. In subsequent years marginal expenditures related to employee turnover are expected. Also, LDR is required to repeat the local, state and national checks at least once every 10 years, the cost of which is indeterminable at this time.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule will increase revenues for the statutorily dedicated Criminal Identification and Information Fund by an estimated \$31,806 in FY 18 and an indeterminable, though likely marginal, amount in subsequent years. To the extent LDR obtains local criminal history record checks, revenues would accrue to local governmental entities by an indeterminable amount.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

This rule will affect current and potential employees, contractors and subcontractors of LDR. No significant effect on workload, costs, or paperwork is anticipated for the affected persons. Persons being found "FTI unsuitable" will be denied access to FTI. In extreme cases, a contractor or subcontractor's contract may be terminated. The department does not have the information needed to estimate any of these impacts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Prospective employees, contractors and subcontractors will be notified of this requirement during the application process (even though the actual checks will not be done until a prospective employee, contractor or subcontractor has been chosen). People who do not believe they can meet this requirement will likely remove themselves from the process without LDR's knowledge. However, the degree to which the rule will affect aggregate competition and employment is indeterminable.

Kimberly Robinson
Secretary
1710#018

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

**Department of Wildlife and Fisheries
Office of Fisheries
and
Wildlife and Fisheries Commission**

Removal of Abandoned Crab Traps (LAC 76:VII.367)

Notice is hereby given in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:322(N), that the Wildlife and Fisheries Commission proposes to amend LAC 76:VII.367 to temporarily close a portion of state inside waters to the use of crab traps in order to facilitate the removal of abandoned crab traps in these waters.

The Wildlife and Fisheries Commission has amended the provisions in LAC 76:VII.367 governing the locations of temporary crab trap closures to address problems in portions of state waters resulting from large numbers of abandoned and derelict crab traps (*Louisiana Register*: Volume 30, Number 1; Volume 31, Number 1; Volume 32, Number 2; Volume 33, Number 1; Volume 34, Number 1; Volume 36; Number 1; Volume 38, Number 1; Volume 38, Number 12; Volume 40, Number 1; Volume 41, Number 1; Volume 42, Number 1; Volume 42, Number 12). The Wildlife and Fisheries Commission, on October 5, 2017, proposes to amend the provisions to describe a new portion of state waters to be temporarily closed to the use of crab traps for the purpose of conducting a crab trap cleanup.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§367. Removal of Abandoned Crab Traps

A. The use of crab traps shall be prohibited for a 14-day period from 12 a.m. February 1, 2018 through 11:59 p.m. February 14, 2018 within portions of Plaquemines and Jefferson Parishes as described below:

1. from a point originating on the western boundary of the Barataria Waterway (latitude 29 degrees 34' 54.52" north, longitude 90 degrees 3' 41.24" west), thence easterly to the intersection of Highway 23 and Reddick Lane (latitude 29 degrees 34' 53.36" north, longitude 89 degrees 49' 38.29" west), thence southerly on Highway 23 to the intersection of Caroline Avenue and Highway 23, thence southwesterly to a point where Little Pass and the southern bank of the Freeport Sulphur Canal intersect (latitude 29 degrees 27' 19.15" north, longitude 89 degrees 42' 25.96" west), thence southwesterly following the southern bank of the Freeport Sulphur Canal to a point located at latitude 29 degrees 23' 51.08" north, longitude 89 degrees 46' 30.00" west, thence westerly to a point located on the western shore of the Barataria Waterway at latitude 29 degrees 24' 17.19" north, longitude 89 degrees 59' 24.00" west, thence northerly following the western shore of the Barataria Waterway and terminating at the origin.

B. The use of crab traps shall be prohibited for a 10-day period from 12 a.m. February 1, 2018 through 11:59 p.m. February 10, 2018 within the parishes of St. John the Baptist, St. Charles, Jefferson Parish, St. Tammany, as described below:

1. from a point of origin where I-55 intersects Pass Manchac (latitude 30 degrees 17' 7.08" north, longitude 90 degrees 24' 6.07" west), thence easterly following the northern bank of Pass Manchac to the point where Pass Manchac exits at the northwest bank of Lake Pontchartrain, thence northerly following the bank of Lake Pontchartrain to the south bound lane of the Lake Pontchartrain Causeway (latitude 30 degrees 21' 51.75" north, longitude 90 degrees 5' 38.59" west), thence southerly to a point where the Lake Pontchartrain Causeway crosses the Lakefront Trail located at latitude 30 degrees 1' 10.06" north, longitude 90 degrees 9' 17.28" west, thence westerly following the Lakefront Trail along the south bank of Lake Pontchartrain until it intersects the Duncan Canal (latitude 30 degrees 2' 50.56" north, longitude 90 degrees 16' 45.21" west), thence westerly past the Duncan Canal continuing to follow the south bank of Lake Pontchartrain to a point where I-10 passes over the southern bank of Lake Pontchartrain (latitude 30 degrees 3' 21.43" north, longitude 90 degrees 22' 17.79" west), thence westerly on I-10 to the intersection of I-55, thence northerly on I-55 and terminating at the origin.

C. The use of crab traps shall be prohibited for a 10-day period from 12 a.m. February 16, 2018 through 11:59 p.m. February 25, 2018 to coincide with the Texas closure of Sabine Lake. This closure will take place within that portion of Cameron Parish as described below:

1. from a point originating from the intersection of the southern side of LA Highway 82 and the eastern shore of Sabine Lake, thence northerly along the eastern shoreline of Sabine Lake to its intersection with East Pass, thence due north to Sabine Island, thence westerly along the southern shoreline of Sabine Island to its westward most point, thence due west to the Texas state line, thence southerly along the Louisiana/Texas state line to its intersection with LA Highway 82, thence easterly along the southern side of LA Highway 82 and terminating at its origin.

D. The use of crab traps shall be prohibited for a 16-day period from 12 a.m. February 16, 2018 through 11:59 p.m. March 3, 2018 within St. Bernard Parish as described below:

1. from a point of origin located at the most northeastern corner of Proctor Point in Lake Borgne (latitude 29 degrees 56' 47.47" north, longitude 89 degrees 42' 54.25" west), thence easterly to the most northwestern point in Lake Eugenie (latitude 29 degrees 55' 42.99" north, longitude 89 degrees 26' 32.41" west), thence southerly past Coon Nest Island to a point located on the western bank of the Mississippi River Gulf Outlet (MRGO) (latitude 29 degrees 42' 29.25" north, longitude 89 degrees 26' 16.56" west), thence northwesterly following the western bank of the MRGO to the intersection of Bayou La Loutre, thence westerly following the southern bank of Bayou La Loutre until Bayou La Loutre intersects with and the Shell Beach Cut (latitude 29 degrees 50' 28.27" north, longitude 89 degrees 41' 23.38" west), thence following the western bank of the Shell Beach cut northerly to its entry point at Lake Borgne (latitude 29 degrees 51' 54.53" north, longitude 89 degrees 40' 32.52" west), thence westerly following the southern bank of Lake Borgne as it makes its northern turn at Proctor Point and terminating at the origin.

E. The use of crab traps shall be prohibited for a 16-day period from 12 a.m. March 4, 2018 through 11:59 p.m. March 19, 2018 within those portions of Jefferson and Plaquemines Parishes as described below:

1. from a point located where Bayou La Loutre crosses under Highway 300 (latitude 29 degrees 50' 40.41" north, longitude 89 degrees 45' 32.18" west), thence southerly on Highway 300 to Sweetwater Marina in Delacroix, thence southerly following the western bank of Bayou Terre aux Boeufs to its point of exit into Black Bay (latitude 29 degrees 39' 14.73" north, longitude 89 degrees 32' 54.19" west), thence southeasterly to a point located at the southern tip of Mozambique Point (latitude 29 degrees 38' 2.27" north, longitude 89 degrees 30' 2.80" west), thence easterly to a point located on the western bank of the MRGO, across from Grace Point (latitude 29 degrees 41' 1.11" north, longitude 89 degrees 24' 2.54" west), thence northwesterly following the western bank of the MRGO to the intersection of Bayou La Loutre, thence westerly following the northern bank of Bayou La Loutre and terminating at the origin.

F. The use of crab traps shall be prohibited for a 14-day period from 12 a.m. March 16, 2018 through 11:59 p.m. March 29, 2018 within that portion of Terrebonne Parish as described below:

1. from a point originating from the intersection of LA Highway 57 and Dulac Canal, thence easterly along LA Highway 57 to its intersection with LA 56, thence due east to the western shoreline of Bayou Little Caillou, thence northerly along the western shoreline of Bayou Little Caillou to its intersection with Lapeyrouse Canal, thence easterly along the northern shoreline of Lapeyrouse Canal to its intersection with Bayou Terrebonne, thence southerly along the eastern shoreline of Bayou Terrebonne to its intersection with Seabreeze Pass, thence southwesterly to channel marker number 17 of the Houma Navigation Canal (latitude 29 degrees 11' 11.3" north, longitude 90 degrees 36' 44.5" west), thence southwesterly to the northern most point on Pass la Poule Island (latitude 29 degrees 08' 33.5" north, longitude 90 degrees 39' 01.3" west), thence westerly to Bayou Sale channel marker (latitude 29 degrees 06' 31.8" north, longitude 90 degrees 44' 34.2" west), thence northerly

to the western shoreline of Bayou Sale, thence northerly along the western shoreline of Bayou Sale to its intersection with Four Point Bayou, thence northerly along the western shoreline of Four Point Bayou to its intersection with the Houma Navigation Canal, thence northerly along the western shoreline of the Houma Navigation Canal to its intersection with Bayou Grand Caillou, thence northerly along the western shoreline of Bayou Grand Caillou to its intersection with Dulac Canal, thence easterly along the northern shoreline of Dulac Canal and terminating at its origin.

G. The use of crab traps shall be prohibited for a 14-day period beginning at 12 a.m. on March 18, 2018 and end on March 31, 2018 at 11:59 p.m. for portions located in Iberia and St. Mary Parishes as described below:

1. from a point originating from the intersection of the Gulf Intracoastal Waterway and the Acadiana Navigational Channel, thence southwesterly along the Acadiana Navigational Channel red buoy line to the red navigational marker number 12 on the Marsh Island shoreline near Southwest Pass, thence easterly along the northern shoreline of Marsh Island to longitude 91 degrees 43' 00" west, thence north along longitude 91 degrees 43' 00" west to the shoreline of West Cote Blanche Bay, thence westerly along the northern shoreline of West Cote Blanche Bay to its intersection with the Ivanhoe Canal, thence northerly along the eastern shoreline of the Ivanhoe Canal to its intersection with the Gulf Intracoastal Waterway, thence westerly along the northern shoreline of the Gulf Intracoastal Waterway and terminating at the origin.

H. All crab traps remaining in the closed area during the specified period shall be considered abandoned. These trap removal regulations do not provide authorization for access to private property; authorization to access private property can only be provided by individual landowners. Crab traps may be removed only between one-half hour before sunrise to one-half hour after sunset. Department of Wildlife and Fisheries personnel or its designees are authorized to remove these abandoned crab traps within the closed area. All traps removed during a closed area are to be brought to the designated disposal area. No person removing crab traps from the designated closed areas during the closure periods shall possess these traps outside of the closed area. The Wildlife and Fisheries Commission authorizes the secretary of the Department of Wildlife and Fisheries to designate disposal sites.

AUTHORITY NOTE: Promulgated in accordance with R.S. 56:332(N).

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 30:101 (January 2004), amended LR 31:108 (January 2005), LR 32:266 (February 2006), LR 33:113 (January 2007), LR 34:97 (January 2008), LR 36:77 (January, 2010), LR 38:146 (January 2012), LR 38:3250 (December 2012), LR 40:96 (January 2014), LR 41:155 (January 2015), LR 42:70 (January 2016), amended by the Department of Wildlife and Fisheries, Office of Fisheries and the Wildlife and Fisheries Commission LR 42:2196 (December 2016), LR 44:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of

the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act 1183 of 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S.49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Interested persons may submit written comments relative to the proposed Rule to Mr. Peyton Cagle, Marine Fisheries Biologist DCL-B, Marine Fisheries Section, 1213 North Lakeshore Dr., Lake Charles, LA 70611, or via email to peyton.cagle@la.gov prior to November 30, 2017.

Chad J. Courville
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Removal of Abandoned Crab Traps

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change will have no impact on state or local governmental unit expenditures.

The proposed rule change would prohibit the use of crab traps in portions of ten parishes at different periods in February and March 2018. The proposed rule would establish four area closures in February banning the local use of crab traps in portions of Jefferson and Plaquemines parish (February 1 through February 14, 2018), portions of St. John the Baptist, St. Charles, Jefferson, and St. Tammany parishes (February 1 through February 10, 2018), portions of Cameron Parish (February 16 through February 25, 2018), and portions of St Bernard Parish (February 16 through March 3, 2018). It would establish four additional closures in March prohibiting the local use of crab traps in portions of Jefferson and Plaquemines parishes (March 4 through March 19, 2018), portions of Terrebonne Parish (March 16 through March 29, 2018), and portions of Iberia and Saint Mary parishes (March 18 through March 31, 2018).

The proposed rule change would also mandate the removal of crab traps from the designated areas by trap owners prior to the closures and authorizes the Louisiana Department of Wildlife and Fisheries or their designees, during the closure, to remove any crab traps within the closed area and transport them to designated disposal sites. The Department will not incur additional costs in order to remove crab traps.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is anticipated to have no impact on revenue collections of the state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Crab fishermen who utilize the areas proposed for closure will experience lost fishing time during the designated period and encounter additional costs from having to temporarily

remove their traps. These crab fishermen must either move their traps to open fishing areas or remove their traps from the water for the duration of the closure. Traps that are not removed from waters in the closed areas within the allotted time will be destroyed, potentially creating an additional cost to replace the traps for noncompliant fishermen.

Local seafood dealers, processors and consumers may experience a slight decrease in the availability of fresh crabs during the closures, resulting in a slightly higher price for fresh crabs in the short term. However, the crab resource will not be lost or harmed in any way and will be available for harvest when the closed area is reopened.

The removal of abandoned crab traps should provide improved fishing and reduced fishing costs for recreational saltwater fishermen, commercial fishermen and individuals who operate vessels within the designated by reducing encounters with abandoned traps that often result in lost fishing time and damage to the vessel's lower unit or fishing gear. The removal of abandoned crab traps will reduce the mortality of and injuries to crabs and by-catch that become ensnared and die in these traps.

The overall impact of the proposed area closure is anticipated to be minimal because the closure would occur during the time of the year with lowest harvests and adjacent waters will remain open for crab fishermen to continue to fish.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Since waters adjacent to the closure area will remain open for crab harvest and fishermen who fish during this time period are expected to relocate their traps, effects on competition and employment are expected to be negligible.

Bryan McClinton
Undersecretary
1710#038

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Department of Wildlife and Fisheries Wildlife and Fisheries Commission

Blue Crab Harvest—Female Crabs (LAC 76:VII.346)

Notice is hereby given in accordance with the Administrative Procedure Act, R.S. 49:950 et seq., and through the authority granted in R.S. 56:6(25)(a), that the Wildlife and Fisheries Commission, on October 5, 2017, proposes to change blue crab harvest regulations. The proposed changes will address the current state of the stock of blue crab and still allow a limited harvest during March and April without having a full closure of the fishery.

Title 76

WILDLIFE AND FISHERIES

Part VII. Fish and Other Aquatic Life

Chapter 3. Saltwater Sport and Commercial Fishery

§346. Restriction of Mature and Immature Female Blue Crab Harvest

A. The commercial harvest of female blue crabs is prohibited during the months of March and April for the years 2018 and 2019.

B. - C. ...

D. However, a legally licensed commercial crab fisherman may have in his possession an incidental take of immature female crabs, and/or mature female blue crabs during the prohibited months, in an amount not to exceed 2 percent of the total number of crabs in his possession.

1. To determine whether the total number of crabs in possession violates this Subsection, the enforcement agent shall take:

- a. a random sample of 50 crabs from each crate; or
- b. group of crabs equivalent to one crate.

2. If more than 2 percent of the crabs in that 50-crab random sample are immature female crabs, and/or mature female crabs during the prohibited months, the entire number of crabs in that crate or group of crabs equivalent to one crate shall be considered to be in violation.

E. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S.56:6(25) (a), R.S. 56:8, R.S. 56:32, R.S. 56:56(A)(5), R.S. 56:320(B)(3), R.S. 56:326(A)(2), R.S. 56:315, R.S. 56:332(E)(1) and R.S. 56:355.

HISTORICAL NOTE: Promulgated by the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission LR 42:1962 (November 2016), amended LR 44:

The secretary of the Department of Wildlife and Fisheries is authorized to take any and all necessary steps on behalf of the Commission to promulgate and effectuate this Notice of Intent and final Rule, including but not limited to, the filing of the Fiscal and Economic Impact Statement, the filing of the Notice of Intent and final Rule and the preparation of reports and correspondence to other agencies of government.

Family Impact Statement

In accordance with Act 1183 of 1999 Regular Session of the Louisiana Legislature, the Department of Wildlife and Fisheries, Wildlife and Fisheries Commission hereby issues its Family Impact Statement in connection with the preceding Notice of Intent. This Notice of Intent will have no impact on the six criteria set out at R.S. 49:972(B).

Poverty Impact Statement

The proposed rulemaking will have no impact on poverty as described in R.S. 49:973.

Provider Impact Statement

This Rule has no known impact on providers as described in HCR 170 of 2014.

Public Comments

Written comments should be addressed to Peyton Cagle, Marine Fisheries Biologist, 1213 N. Lakeshore Drive, Lake Charles, LA 70601, or via e-mail to peyton.cagle@la.gov prior to November 30, 2017.

Chad J. Courville
Chairman

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Blue Crab Harvest—Female Crabs

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule change is not anticipated to have a material impact on the revenue collections of LDWF based on historical data collections.

Violations of the current rule establishing the 30-day commercial harvest ban and violations of the proposed rule prohibiting the harvest of mature females are class two violation with penalties including fines of \$100 to \$350 or possible imprisonment. Most of the funds collected from fines accrue to local governing authorities. For every guilty verdict, \$7 is deposited into a fund maintained by LDWF.

Because the LDWF Law Enforcement Division issued five warnings and citations for violation of the 30-day prohibition on the commercial harvest of crabs in 2017, funds collected from fines associated with violations of the current rule are modest. The possible total amount of fines collected for the possession of an excess amount of mature female crabs is indeterminable because this is a new violation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is not anticipated to have a material impact on the revenue collections of LDWF based on historical data collections.

Violations of the current rule establishing the 30-day commercial harvest ban and violations of the proposed rule prohibiting the harvest of mature females are class two violation with penalties including fines of \$100 to \$350 or possible imprisonment. Most of the funds collected from fines accrue to local governing authorities. For every guilty verdict, \$7 is deposited into a fund maintained by LDWF.

Because the LDWF Law Enforcement Division issued five warnings and citations for violation of the 30-day prohibition on the commercial harvest of crabs in 2017, funds collected from fines associated with violations of the current rule are modest. The possible total amount of fines collected for the possession of an excess amount of mature female crabs is indeterminable because this is a new violation.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The estimated combined effect of the simultaneous removal of the 30-day crab fishery closure and the imposition of a prohibition on mature female crab landings in March and April would result in a change in receipts of less than \$10,000 per year.

The proposed rule change removing the 30-day closure of the blue crab fishery is expected to result in an increase in dockside receipts among commercial crab harvesters of approximately \$2.63 million per year. However, the proposed rule change imposing a prohibition on the harvest of mature female crabs in March and April is expected to result in a decrease in dockside receipts among commercial crab harvesters of approximately \$2.62 million per year.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

The removal of the 30-day blue crab fishery closure under the proposed rule change may have minor short-term benefits in employment for firms engaged in purchasing, packaging, or processing blue crabs.

Bryan McClinton
Undersecretary
1710#037

Gregory V. Albrecht
Chief Economist
Legislative Fiscal Office

NOTICE OF INTENT

Workforce Commission

Office of Workers' Compensation Administration

Fees and Forms

(LAC 40:I.Chapter 66 and 40:III.501)

The Louisiana Workforce Commission does hereby give notice of its intent to amend certain portions of the Louisiana Administrative Code, Title 40, Labor and Employment, Part I, Workers' Compensation Administration, Subpart 3, Hearing Rules, Chapter 66, as well as Part III, Workers' Compensation Second Injury Board, Chapter 5, regarding

fees and forms. This Rule is promulgated by the authority vested in the director of the Office of Workers' Compensation found in R.S. 23:1291 and R.S. 23:1310.1(C).

Title 40

LABOR AND EMPLOYMENT

Part I. Workers' Compensation Administration

Subpart 3. Hearing Rules

Chapter 66. Miscellaneous

Subchapter A. General

§6605. Fees

A. The clerks for the Office of Workers' Compensation Administration shall be entitled to demand and receive the following fees as court costs in a workers' compensation dispute. Fees not pre-paid shall be due upon dismissal of or final judgment in the docket number, or on demand by the clerk:

1. filing of LWC-WC-1008—\$50;
2. filing of LWC-WC-1011 when no LWC-WC-1008 for the same parties, same accident, and same issue(s) is pending—\$50;
3. service of process on secretary of state—\$50 or as otherwise set by the secretary of state;
4. copies of any paper in any suit record—\$0.25 per page;
5. for each certification—\$1 per page;
6. filing by facsimile or electronic transmission—\$5 transmission fee per hearing rule, §5701.C.1.c, in addition to \$5 for the first 5 pages and \$2.50 for each page thereafter;
7. cost of preparation of record for appeal—available upon request from the district offices;
8. cost of service by certified mail—\$8 per service;
9. subpoenas/subpoenas *duces tecum*—\$5;
10. privilege of litigating without prior payment of costs.

a. If a requestor is unable to pay the costs of court in advance because of his or her poverty and lack of means, the requestor shall fully execute an *in forma pauperis* request on the LWC request for waiver of advance costs form, and file the form with the Office of Workers' Compensation Administration. If the form is deemed proper and the relief sought appropriate, a workers' compensation judge shall execute the pauper order, and the filing fee will not be due in advance or as they accrue. If the request is denied by a workers' compensation judge, all costs shall be pre-paid in full before any documents may be filed.

b. In the event any person seeks to prosecute a suit in a workers' compensation court while incarcerated or imprisoned for the commission of a felony without paying the costs in advance as they accrue or furnishing security thereof, the court shall require such person to advance costs in accordance with Louisiana Code of Civil Procedure, article 5181(B) and (C).

B. The Office of Workers' Compensation Administration shall be entitled to demand and receive the following fees which shall be pre-paid in full before any records are produced, unless otherwise ordered by a workers' compensation judge or otherwise provided by law:

1. record request—\$25 per request per docket number;
2. certification fee—\$25 per request per docket number;
3. if a requestor is indigent and seeks to have the fee waived, the requestor shall fully execute an *in forma pauperis* request on the LWC request for waiver of advance costs form, and file the form with the Office of Workers' Compensation Administration. If the form is deemed proper and the relief sought appropriate, a workers' compensation judge shall execute the pauper order, and the records request will be produced without pre-payment. If the request is denied by a workers' compensation judge, all costs shall be pre-paid in full before any records are produced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Louisiana Department of Labor, Office of Workers' Compensation Administration, LR 25:281 (February 1999), amended LR 25:1871 (October 1999), amended by the Louisiana Workforce Commission, Office of Workers' Compensation, LR 37:1630 (June 2011), amended by the Workforce Commission, Office of Workers' Compensation Administration, LR 42:763 (May 2016), LR 44:

Subchapter C. Waiver of Costs for Indigent Party

§6613. General

A. Waiver of costs for indigent party shall be governed by Code of Civil Procedure, articles 5181 et seq. The request for waiver of costs shall be made on LWC request for waiver of payment of advance costs form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1.

HISTORICAL NOTE: Promulgated by the Department of Labor, Office of Workers' Compensation Administration, LR 25:282 (February 1999), amended LR 25:1872 (October 1999), LR 33:660 (April 2007), amended by the Workforce Commission, Office of Workers' Compensation Administration, LR 44:

Subchapter E. Forms
§6665. Workers' Compensation Records
Request Form; LWC-WC-1150

WORKERS' COMPENSATION RECORDS REQUEST FORM

Mail completed form to:

Louisiana Workforce Commission
OWCA Records Management Section
1001 N. 23rd Street
P.O Box 94040
Baton Rouge, LA 70804-9040
Telephone No.: 225-342-7565

Status of your records request: (Office use only.)

- ☐ Will be processed.
☐ Is being returned. *See Section III, Page 2.*
☐ Has been processed. You owe a copying fee, *See Section III, Page 2.*
☐ Is complete. *See Section III, Page 2.*

Note: Copies of documents provided through this request shall adhere to the provisions of La. R.S. 23:1020.1, *et seq.* and La. R.S. 44:1, *et seq.*, which limits the inspection and copying of workers' compensation records. ***A \$25.00 fee is required per employee search. (Exception: Requests for LWC-WC-1002 will NOT be assessed a \$25.00 search fee.)** Copying fees are \$0.25 per page. Make all checks payable to the **OWCA Administrative Fund**.

SECTION I: TO BE COMPLETED BY REQUESTOR

1. Select all that apply:

- ☐ I am the Employee **OR** Legal Representative of the Employee. (*Attach letter of representation.*)
☐ I am the Employer/Insurer **OR** Legal Representative of the Employer/Insurer. (*Attach letter of representation.*)
☐ I am **NOT** a party to a workers' compensation claim. (*Attach employee authorization, LWC-WC- 1051.*)
☐ I am a Prospective Employer. (*Attach employee authorization, LWC-WC- 1051.*)

2. Name of Requestor (Please Print)

3. Phone Number

4. Company Name (If Applicable)

5. Fax Number

6. Address, City, State ZIP

7. Email

SECTION II: RECORDS REQUESTED

1. Employee's Name (*Please use a separate form for each employee.*)

2. Employee's Social Security Number

3. Identify the workers' compensation claim you are requesting:

- ☐ Workers' Compensation Claim Docket # _____ Date of Injury _____
☐ **ALL** cases for this injured worker.
- If known, list the Docket # and Date of Injury for each claim in the Additional Comments Section, see right. *You will be assessed a \$25.00 search fee for each workers' compensation docket number.*

Additional Comments:

4. Additional records I am requesting:

- ☐ Notice Of Payment, Modification, Suspension, Termination or Controversion of Compensation or Medical Benefits (LWC-WC-1002).
Only available to Employee or Employee Representative per La. R.S. 23:1201.1. You will **NOT be assessed a \$25.00 search fee for this records request.*
☐ Other documents requested. *Please specify in the Additional Comments section.*

5. Need records certified? (If certified, you will be assessed \$25.00.)

- ☐ Yes ☐ No

I have read and understand this form and the accompanying instructions. I certify that all information provided by me to the Office of Workers' Compensation Administration is accurate and correct to the best of my knowledge. I understand that providing false or misleading information may subject me to prosecution.

Signature of Requestor _____

Date _____

SECTION III: TO BE COMPLETED BY OWCA RECORDS MANAGEMENT SECTION

☐ **1. This records request will NOT be processed due to the following:**

- ☐ \$25.00 Search fee not received.
- ☐ No Social Security Number/incomplete number.
- ☐ Employee Authorization form required.
- ☐ Incomplete information. Please provide: _____
- *Your request will NOT be processed until the information is provided.

☐ **2. Your request has been processed.**

_____ Pages of responsive records have been found. Please submit a check in the amount of \$_____ to the OWCA Administrative Fund. ***No** records will be sent until the check is received by the OWCA.

Your request has produced more than one employee claim. _____ claims have been found. Please submit a check in the amount of \$_____ to the OWCA Administrative Fund. ***No** records will be sent until the check is received by the OWCA.

☐ **3. Your request is complete. The records search has:** ☐ No Records Found ☐ See Attached records.

Records request completed by _____

Date: _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and R.S. 23:1293.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Workers' Compensation Administration, LR 44:

**§6667. Employee Authorization for OWCA to Release
Confidential Workers' Compensation Records; LWC-WC-1150**

**EMPLOYEE AUTHORIZATION FOR OWCA TO RELEASE
CONFIDENTIAL WORKERS' COMPENSATION RECORDS**

EMPLOYEE: Please be aware that you **DO NOT** have to release all of your confidential information and you have a right to refuse to sign this document. You can choose to release only your public records, which includes: any final decision, award, or order of a workers' compensation judge. However, if you choose to release all of your confidential workers' compensation information, you **MUST** authorize the Office of Workers' Compensation Administration to release your confidential records information to anyone not a party to your workers' compensation claim. ***This release must be attached to the Employee Workers' Compensation Records Request Form.**

SECTION I: TO BE COMPLETED BY EMPLOYEE

1. Employee's Full Name (Please Print)	2. Social Security Number
3. Street Address	4. Date of Birth
5. City, State, Zip	6. Phone Number

7. What records do you want to release?

☐ Only my workers' compensation claim(s) information that is considered public record under La. R.S. 23:1293(B)(1) which only includes: final decision(s), award(s), or order(s) of a workers' compensation judge.

OR

☐ Any and all of my workers' compensation claim(s) information, including confidential information, medical records, wage information, etc. in the possession of the Office of Workers' Compensation Administration, Records Management.

I understand that the Louisiana Workers' Compensation Act, La. R.S. 23:1020.1, *et seq.*, provides that certain information regarding prior work related injuries may be released to a requesting party. By signing this authorization, I hereby voluntarily authorize the State of Louisiana, Office of Workers' Compensation Administration, Records Management Section to release only the information selected above in Section I and contained in my workers' compensation records, if any, to the Recipient named in Section II. This release may contain public and non-public records in my workers' compensation file(s) depending on my selection in Section I. This release is only for the recipient named in Section II and shall not be released to any third parties or any party not specifically named on this authorization.

This authorization will expire thirty (30) days from the date of signature.

Employee's Signature _____ Date _____

SECTION II: RECORDS TO BE DISCLOSED TO

1. Name of Recipient (Please Print)	2. Company Name (if applicable)
3. Street Address	4. Phone Number
5. City, State, Zip	6. Please state Recipient's relationship to the employee: *See Section III, Page 2.

SECTION III: IF THE RECIPIENT IS A PROSPECTIVE EMPLOYER**

You must certify and sign the following:

I hereby certify the information sought by this authorization is made on an applicant for employment only after a conditional job offer has been made and accepted, or on a current employee for a purpose which is job related and consistent with business necessity. I further certify the information obtained in the authorization will **NOT** be used to discriminate in any manner against the individual who is the subject of this authorization on any basis, in violation of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*, or any other state or federal law, as applicable.

I am aware of the confidential and privileged nature of an employee's Workers' Compensation records, pursuant to La. R.S. 23:1293.

Employer's Signature _____ Date _____

****MUST BE NOTARIZED PRIOR TO RECORDS REQUEST**

Sworn and subscribed before me this _____ day of _____, 20____ at _____, Louisiana.

Notary Public's Signature
Print Name: _____
Notary ID: _____
My commission expires: _____

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and R.S. 23:1293.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Workers' Compensation Administration, LR 44:

Part III. Workers' Compensation Second Injury Board

Chapter 5. Forms

§501. Request for Reimbursement; Form B

**LOUISIANA SECOND INJURY BOARD
REQUEST FOR REIMBURSEMENT—FORM B**

			SIF CLAIM #	
EMPLOYEE:			DATE OF ACCIDENT:	
CARRIER/SELF-INS			CARRIER'S CLAIM#:	
EMPLOYER:			JCN #:	
	AMOUNT WEEKLY	FROM-TO DATES THIS SUBMISSION	TOTAL WEEKS	TOTAL AMOUNT PAID
TTD				
PTD				
SEB				
DEATH				
TOTAL INDEMNITY PAID THIS SUBMISSION				\$
TOTAL MEDICAL BENEFITS PAID THIS SUBMISSION				\$
TOTAL SETTLEMENT (INDEMNITY + MEDICAL) PAID THIS SUBMISSION				\$
TOTAL WC BENEFITS PAID THIS SUBMISSION				\$

THE FOLLOWING DOCUMENTATION MUST BE INCLUDED WITH THE FORM B SUBMISSION

INDEMNITY REIMBURSEMENT REQUEST

Electronic print-out of indemnity payments shall include: date of payment, payee, benefit dates (from/thru), amount paid, and check or ACH number

MEDICAL REIMBURSEMENT REQUEST

A. Electronic print-out of medical payments shall include: date of payment, payee, service dates (from/thru), amount paid, and check or ACH number

B. Copies of all medical bills or EOBs ordered and numbered to correspond with electronic print-out (shall include patient info, provider info, date of service, CPT codes, ICD codes, and amount charged)

SETTLEMENT REIMBURSEMENT REQUEST

Signed petition, Judgement, Receipt and Release, Order from OWCA and a copy of the check or electronic print-out of payment which shall include: date of payment, payee, amount paid, and check or ACH number

THIRD PARTY RECOVERY

IS THERE ANY POTENTIAL TO RECOVER ALL OR A PORTION OF THE BENEFITS PAID TO THE INJURED EMPLOYEE FROM A THIRD PARTY? ☐ YES ☐ NO

I HEREBY CERTIFY THAT I AM AUTHORIZED TO SUBMIT THIS REQUEST AND THE INFORMATION PROVIDED ON THIS FORM IS CORRECT AND ACCURATE TO THE BEST OF MY KNOWLEDGE:

Signature

Print Name

Date

Company: _____ Telephone: _____

SIB Form B 9/17

AUTHORITY NOTE: Promulgated in accordance with R.S. 23:1310.1 and R.S. 23:1293.

HISTORICAL NOTE: Promulgated by the Workforce Commission, Office of Workers' Compensation Administration, LR 44:

Family Impact Statement

This amendment to Title 40 should have no impact on families.

Poverty Impact Statement

This amendment to Title 40 should have no impact on poverty or family income.

Provider Impact Statement

1. This Rule should have no impact on the staffing level of the Office of Workers' Compensation as adequate staff already exists to handle the procedural changes.

2. This Rule should create no additional cost to providers or payers.

3. This Rule should have no impact on ability of the provider to provide the same level of service that it currently provides.

Public Comments

All interested persons are invited to submit written comments on the proposed Rule. Such comments should be sent to Sheral Kellar, OWC-Administration, 1001 North Twenty-Third Street, Baton Rouge, LA 70802. Such comments should be received on November 9, 2017 by COB.

Public Hearing

A public hearing will be held on November 29, 2017, at 2 p.m. at the Office of Workers' Compensation located at 1001 North Twenty-Third Street at the main campus of the Workforce Commission, in Baton Rouge, LA. The public is invited to attend.

Sheral Kellar
Director

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Fees and Forms

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

Other than the publication fee associated with the proposed rule changes, it is not anticipated that Louisiana Workforce Commission (LWC) will incur any other costs or savings as a result of this rule. The proposed rule provides for fee updates and standardized forms for the Office of Workers' Compensation.

The following fees are being changed and/or added:

1 - The filing fee for electronic transmissions is being changed from \$5 for the first 10 pages to \$5 for the first 5 pages. The fee for additional pages is being changed from \$1 per page to \$2.50 per page.

2 - The cost for receiving records by certified mail is being changed from \$5 to \$8.

3 - The rule adds a record request fee and a certification fee of \$25 each per docket number.

Also, the rule clarifies that in certain situations, such as indigency, the payment of fees can be waived or postponed.

Finally, the proposed rule change codifies existing forms that are currently being used by the Office of Workers' Compensation.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule change is estimated to increase revenue collections for the Office of Workers' Compensation (OWC) by \$144,525 in FY 18, \$280,920 in FY 19, and \$214,920 in FY 20.

OWC receives approximately 1,100 record requests per month. A \$25 request fee is proposed in the rule. This is projected to generate an additional \$27,500 in revenue collections per month. This fee is estimated to generate \$137,500 in revenue the FY 18.

Additionally, the proposed rule increases the filing fee for electronic submissions over 5 pages by \$1.50 per page. OWC receives approximately 711 faxes per month. Approximately 15% are greater than five pages. The amount of revenue generated from this increase is projected to be \$1,335 per month (\$6,675 annually). Revenue generated in future fiscal years is estimated to be \$16,020 annually.

Finally, a \$25 certification fee is proposed in the rule. OWC receives approximately 3 certification requests per month. This is projected to generate an additional \$75 in revenue collections per month. This fee is estimated to generate \$350 in revenue in FY 18. Revenue generated in future fiscal years is estimated to be \$900 annually.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

Persons requesting records, a record certification, or submitting an electronic notification will incur a cost based on the proposed changes in the fee schedule.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated effect on competition and employment.

Sheral Kellar
Director
1710#067

John D. Carpenter
Legislative Fiscal Officer
Legislative Fiscal Office

Administrative Code Update

CUMULATIVE: January-September 2017

Location:					Location:				
LAC Title	Part #.Section #	Action	Month	LR 43 Page #	LAC Title	Part #.Section #	Action	Month	LR 43 Page #
4	V.Chapters 13,23,55 (PPM)	Repealed	June	1105	33	V.108,109,309,517,537,705,1103,1107	Amended	June	1138
	V.Chapter 15 (PPM)	Amended	June	1110		V.1109,1515,1516,1529,1751,1903,1907	Amended	June	1138
	V.Chapters 17,47,49,51 (PPM)	Amended	June	1105		V.2201,2203,2207-2211,2216,2221,2227	Amended	June	1138
7	V.919,923	Amended	Aug.	1517		V.2231,2239-2245,2299,3001,3203,3301	Amended	June	1138
	V.3101	Adopted	Mar.	515		V.3511,4037,4053,4071,4085,4301,4399	Amended	June	1138
	V.Chapter 71	Amended	Feb.	245		V.4407,4501,4513,4999	Amended	June	1138
	V.7108,7109	Adopted	Feb.	245		V.4999	Amended	June	1149
	XV.167	Amended	Feb.	245		V.Chapter 51	Amended	May	931
	XV.Chapter 5	Amended	Mar.	510		V.5123,5149	Adopted	May	931
	XV.519,701-725	Repealed	Mar.	510		V.5125,5135,5137,5143	Repealed	May	931
	XXI.101,531,533,1103,1105	Amended	July	1276		V.10303	Amended	Mar.	537
	XXI.Chapters 5,9	Amended	July	1271		VII.1501-1505,10535	Amended	May	931
	XXI.925,927,929,931,933,935	Repealed	July	1271		VII.1507-1511	Adopted	May	931
	XXXIX.Chapter 5	Amended	Aug.	1517		IX.1309,1507,7301	Amended	May	931
	XXXIX.545,547	Adopted	Aug.	1517		IX.Chapter 25	Amended	July	1348
	XLIX.Chapters 1-31	Adopted	July	1251		IX.7315	Adopted	May	931
13	I.107	Amended	Mar.	519		XI.307,1305	Amended	May	931
	I.Chapter 5	Amended	June	1132	37	XV.579,2504,2509-2511,2599	Amended	May	931
	I.501,502	Adopted	June	1132		I.1101	Repealed	July	1416
22	III.Chapter 47	Amended	Feb.	316		XIII.Chapter 19	Amended	July	1393
	V.211	Amended	Jan.	46		XIII.1951,1953,1961	Adopted	July	1393
	XI.510	Amended	Jan.	46		XIII.Chapter 99	Amended	Mar.	534
25	I.122	Amended	Jan.	46	43	XIII.Chapter 153	Adopted	Mar.	530
	III.Chapter 1	Amended	Aug.	1519		XIX.104	Amended	Mar.	535
	III.101	Adopted	Aug.	1519		XIX.501	Amended	Mar.	536
	IX.Chapters 1-11	Amended	Feb.	290		XIX.571	Adopted	Mar.	536
	IX.329	Adopted	Feb.	290		XXVII.2701	Amended	Jan.	47
28	IV.703	Amended	July	1346	46	XXIX.Chapter 1	Amended	Aug.	1534
	IV.703,1903	Amended	Mar.	518		XXXI.Chapter 1	Adopted	July	1354
	V.Chapter 1	Repealed	Sept.	1727		LXI.903,909,2701	Amended	Mar.	537
	V.Chapter 2	Adopted	Sept.	1727		I.Chapter 17	Adopted	April	644
	VI.315	Amended	Sept.	1731		XXI.301	Amended	April	648
	VI.Chapter 5	Adopted	April	638		XXV.111-115,301,317,503,507	Amended	May	958
	XI.603	Amended	Feb.	301		XXXIII.415,1503,1504,1510,1511,1611	Amended	May	955
	XI.Chapter 53	Amended	April	634		XXXIII.420,505	Amended	May	954
	XI.5909	Amended	Aug.	1523		XXXIII.701,1509	Amended	Jan.	48
	XI.Chapters 91-95	Adopted	May	891		XXXIII.1506	Repealed	May	955
	XI.9103-9109	Repealed	May	891		XXXVII.301,501,505,509,513,701,703,901	Amended	Aug.	1536
	XLV.701	Amended	July	1317		XXXVII.1107,2001	Amended	Aug.	1536
	XLV.703-747	Adopted	July	1317		XL.Chapters 1-7	Amended	Feb.	311
	LXXXIX.2109,2329	Amended	July	1288		XLI.1903	Amended	Feb.	316
	LXXXV.101,301,303,305	Adopted	May	879		XLV.Chapters 1,21,51	Amended	July	1362
	LXXXV.103,501,503,701,703	Repealed	May	879		XLV.Chapters 1,31,57	Amended	July	1369
	XCI.Chapters 1-3	Amended	Mar.	516		XLV.408,7503-7509,7513	Amended	Feb.	317
	XCV.Chapters 1-17	Repealed	Feb.	302		XLV.2139,2141	Adopted	July	1362
	CXV.Chapter 23	Amended	July	1287		XLV.3109	Adopted	July	1369
	CXXIII.101	Amended	July	1334		XLV.3111-3125	Repealed	July	1369
	CXXIII.103-113,311,1917-1937	Repealed	July	1334		XLV.5109	Repealed	July	1362
	CXXIII.301-309,501-1915,2101-3105	Adopted	July	1334		XLV.Chapter 77	Amended	Feb.	318
	CXXXI.Chapters 1-4,6-8,10,11	Amended	July	1289		XLV.7725	Repealed	Feb.	318
	CXXXI.205-245,328	Adopted	July	1289		XLVII.3105	Amended	July	1378
	CXXXI.1109,1401	Repealed	July	1289		XLVII.3405	Amended	July	1379
	CXXXIX.107,301,307,309,523,2301,2303	Amended	Feb.	306		XLVII.Chapter 40	Repealed	May	957
	CXXXIX.519,1903,2301,2303	Amended	April	635		LIII.2307	Amended	Jan.	50
	CXXXIX.2701,2703,2707,2709,2713	Amended	Feb.	306		LIII.Chapter 24	Adopted	Aug.	1537
	CXXXIX.401-423,521,707	Repealed	Feb.	306		LIII.2541	Adopted	May	958
	CLXI.103,1711	Amended	April	637		LIII.2707	Amended	May	957
	CLXV.103,305,309,311,707,901,903,1101	Amended	July	1279		L.V.101,301,303,310-312,901	Amended	Mar.	541
	CLXV.320,902	Adopted	July	1279		L.V.101,301-304,310-314	Amended	May	972
	CLXV.1103,1105,1107,1109	Amended	July	1279		L.V.307,308,1002	Adopted	Mar.	541
	CLXV.1111	Repealed	July	1279		L.V.309,508	Adopted	May	972
33	I.1119,1409-1413,1701,4501,4503	Amended	May	931		L.V.313,314,315,316	Repromulgated	Mar.	541
	I.1151	Adopted	May	931		L.V.315,316,901,1001,1003-1007	Amended	May	972
	I.4701-4707,5903	Amended	May	931		LXI.901,2701	Amended	Feb.	343
	III.Chapters 2-3	Amended	May	931		LXI.903,1105,1901	Amended	July	1419
	III.Chapter 5	Amended	May	925		LXVII.Chapter 18	Adopted	May	954
	III.501	Amended	Mar.	520	48	XCI.301	Repromulgated	Jan.	48
	III.509	Amended	Sept.	1731		I.4001	Amended	Jan.	73
	III.Chapter 6	Amended	May	927		I.4001	Repromulgated	Feb.	323
	III.606,611	Adopted	May	927		I.Chapter 45	Repealed	Sept.	1732
	III.2201	Amended	Mar.	521		I.Chapter 45	Adopted	Sept.	1732
	V.105,109,322	Amended	June	1149		I.5239	Amended	Jan.	82
		Repromulgated				I.Chapters 56-57	Amended	July	1379
	V.105,109,322	ed	Aug.	1523					

LAC Title	Part #,Section #	Action	Location:		LAC Title	Part #,Section #	Action	Location:	
			Month	LR 43 Page #				Month	LR 43 Page #
48	I.5678,5698	Adopted	July	1379	51	VII.101	Amended	July	1391
	I.Chapter 72	Repealed	Jan.	50		VII.309	Amended	July	1392
	I.Chapter 72	Adopted	Jan.	50		XII.101,311,325,343,901-907,911	Amended	Jan.	83
	I.8595,8599	Amended	Mar.	524		XII.913	Amended	Jan.	83
	I.9047	Amended	Feb.	329		XII.319,912,1201	Adopted	Jan.	83
	I.Chapter 93	Amended	Jan.	75		XIII.101	Amended	May	966
	I.19303	Adopted	Sept.	1758		XIII.308	Adopted	May	966
	V.Chapters 41-45	Amended	Feb.	330		XXIII.2101	Amended	July	1392
	V.4501	Repealed	Feb.	330	55	I.101,207	Amended	April	676
	V.12317	Adopted	July	1393		I.Chapter 13	Amended	April	671
50	IX.Chapter 11	Adopted	April	664		III.Chapter 1	Amended	Sept.	1759
	I.3103	Amended	April	663		III.161	Adopted	July	1419
	I.3103	Amended	Aug.	1552		III.807,819	Amended	Mar.	535
	I.9319,9381,9405	Amended	Jan.	74		V.101,103,301,303,307,309,1501	Amended	May	968
	II.Chapter 200	Amended	Mar.	525		V.Chapter 11	Repealed	May	968
	II.20005	Amended	Jan.	82		VII.333	Adopted	Aug.	1555
	II.20019	Amended	Feb.	328		VII.335	Adopted	Aug.	1556
	III.2308	Amended	July	1389		VII.337	Adopted	Aug.	1557
	III.2311	Adopted	April	664		IX.Chapter 1	Amended	May	967
	V.Chapter 9	Amended	May	963	58	I.101	Amended	Jan.	88
	V.953	Amended	July	1389		I.103-107	Repealed	Jan.	88
	V.953	Repromulgated	Sept.	1757		XXI.103,105,701	Amended	May	877
	V.963	Amended	Feb.	325		XXI.107,901	Adopted	May	877
	V.1331	Amended	July	1388		XXIII.Chapter 1	Amended	July	1416
	V.2501	Amended	Mar.	522	61	I.1605	Amended	Feb.	300
	V.2503	Amended	May	962		I.1615,1621	Adopted	Feb.	300
	V.2903	Amended	Feb.	322		III.2701	Adopted	Feb.	342
	V.3101,3103	Adopted	Mar.	522		V.101,111,121,203,213,303,304,703,901	Amended	April	648
	V.3103	Amended	May	961		V.907,1103,1307,1503,1701,1703,2503	Amended	April	648
	V.5313,5317,5513,5517,5713,5719,6115	Amended	May	964		V.3101-3107,3501	Amended	April	648
	V.6119	Amended	May	964	67	V.1505	Amended	Sept.	1726
	VII.32917	Adopted	April	662		V.Chapter71	Amended	Sept.	1725
	VII.33103	Amended	Feb.	325	76	V.119	Adopted	Feb.	344
	VII.33105	Adopted	Feb.	325		V.701	Amended	Jan.	90
	IX.15101	Adopted	Sept.	1758		VII.106	Amended	Jan.	90
	IX.15151,15153	Amended	July	1389		VII.335	Repromulgated	Jan.	89
	XV.703	Amended	April	662		VII.537	Amended	Jan.	91
	XV.27501,27503,27901,28101	Amended	Jan.	82		VII.701	Amended	Aug.	1558
	XXI.2705	Adopted	Jan.	74		XIX.Chapter 1	Amended	July	1420
	XXI.2905	Amended	Feb.	324					
	XXII.Chapters 21-27	Repealed	May	962					
	XXIX.Chapters 1,9	Amended	Aug.	1553					
	XXIX.917,919,921,923,925	Repealed	Aug.	1553					
	XXIX.Chapter 11	Adopted	May	966					
	XXXIII.Chapters 1,3,7	Amended	Feb.	321					
	XXXIII.8101,8103,8301,8305	Amended	Feb.	323					

Potpourri

POTPOURRI

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences Structural Pest Control Commission

Approved Termiticides and Manufacturers

The Louisiana Department of Agriculture and Forestry, Office of Agricultural and Environmental Sciences, hereby gives notice of the list of termiticides and manufacturers that have been approved by the Structural Pest Control Commission for use in Louisiana.

Approved Termiticides and Manufacturers			
Product	EPA Reg. No.	Percentage	Manufacturer
Altriset (Chlorantraniliprole)	100-1503	0.05% - 0.10%	Syngenta
Baseline (Bifenthrin)	279-3177	0.06% - 0.12%	FMC
Bifen XTS (Bifenthrin)	53883-189	0.06% - 0.12%	Control Solutions
Bifen IT (Bifenthrin)	53883-118	0.06% - 0.12%	Control Solutions
Bora-Care (Disodium Octaborate Tetrahydrate)	83465-1-64405	23%	Nisus
Borathor (Disodium Octaborate Tetrahydrate)	81824-8	5.0% - 15.0%	Ensysyex II, Inc.
Centerfire 75 WSP (Imidacloprid)	432-1332	0.05% - 0.10%	Bayer
Cyper TC (Cypermethrin)	53883-92	0.25% - 1.00%	Control Solutions
Demon MAX (Cypermethrin)	100-1218	0.25% - 1.00%	Syngenta
Dominion PT (Imidacloprid)	53883-237	0.05% - 0.10%	Control Solutions
Dominion 2L (Imidacloprid)	53883-229	0.05% - 0.10%	Control Solutions
Fuse (Imidacloprid / Fipronil)	53883-328	0.067% - 0.13%	Control Solutions
Fuse Foam (Fipronil/Imidacloprid)	87093-5-53883	0.005% & 0.025%	Control Solutions
MasterLine Bifenthrin 7.9 (Bifenthrin)	73748-7	0.06% - 0.12%	Univar
MasterLine B MaxxPro (Bifenthrin)	279-3206-73748	0.06% - 0.12%	Univar
MasterLine I MaxxPro WSP (Imidacloprid)	73748-8	0.05% - 0.10%	Univar
MasterLine I MaxxPro 2F (Imidacloprid)	73748-9	0.05% - 0.10%	Univar
Maxxthor SC (Bifenthrin)	81824-5	0.06% - 0.12%	Ensysyex II, Inc.
Permethrin SFR (Permethrin)	70506-6-53883	0.50% - 2.00%	Control Solutions
Phantom (Chlorfenapyr)	241-392	0.063% - 0.25%	BASF
Prelude (Permethrin)	5481-550	0.50% - 2.00%	AMVAC
Premise 75 WSP (Imidacloprid)	432-1332	0.05% - 0.10%	Bayer
Premise 2 (Imidacloprid)	432-1331	0.05% - 0.10%	Bayer
Premise Foam (Imidacloprid)	432-1391	0.05%	Bayer

Approved Termiticides and Manufacturers			
Product	EPA Reg. No.	Percentage	Manufacturer
Premise Pre-Construction (Imidacloprid)	432-1331	0.05% - 0.10%	Bayer
Premise Pro (Imidacloprid)	432-1449	0.05% - 0.10%	Bayer
Prothor WSP (Imidacloprid)	82957-2	0.05% - 0.10%	Ensysyex III, Inc.
Talstar P (Bifenthrin)	279-3206	0.06% - 0.12%	FMC
Taurus SC (Fipronil)	53883-279	0.06% - 0.125%	Control Solutions
Tengard SFR (Permethrin)	70506-6	0.50% - 2.00%	United Phosphorus
Termidor Dry (Fipronil)	499-546	0.5%	BASF
Termidor HE (Fipronil)	7969-329	0.06% - 0.125%	BASF
Termidor HP (Fipronil)	7969-354	0.06% - 0.125%	BASF
Termidor SC (Fipronil)	7969-210	0.06% - 0.125%	BASF
Termidor 80WG (Fipronil)	7969-209	0.06% - 0.125%	BASF
Totality (Bifenthrin)	279-3281	0.6%	FMC
Transport (Acetamiprid)(Bifenthrin)	8033-96-279	0.11%	FMC
Transport Mikron Insecticide (Acetamiprid / Bifenthrin)	8033-109-279	0.054% - 0.11%	FMC
UP-Cyde Pro 2.0 EC (Cypermethrin)	70506-19	0.25% - 1.0%	United Phosphorus
Wisdom TC Flowable (Bifenthrin)	5481-520	0.06% - 0.12%	AMVAC

Baits		
Product	EPA Reg. No.	Manufacturer
Advance Compressed Termite Bait II (Diflubenzuron)	499-500	BASF
Isophor Termite Bait (Diflubenzuron)	68850-2	Ensysyex, Inc.
Labyrinth (Diflubenzuron)	68850-2	Ensysyex, Inc.
Labyrinth AC (Diflubenzuron)	68850-2	Ensysyex, Inc.
Recruit AG FlexPack (Noviflumuron)	62719-652	Dow AgroSciences
Recruit IV (Noviflumuron)	62719-453	Dow AgroSciences
Recruit IV AG (Noviflumuron)	62719-454	Dow AgroSciences
Recruit HD (Noviflumuron)	62719-608	Dow AgroSciences
Shatter (Hexaflumuron)	62719-272	Dow AgroSciences
Trelona Compressed Termite Bait (Novaluron)	499-557	BASF
Trelona ATBS Direct Bait Kit (Novaluron)	499-557	BASF

Baits		
Product	EPA Reg. No.	Manufacturer
Trelona ATBS Direct Bait Stations (Novaluron)	499-557	BASF
Trelona ATBS Home Monitoring Kit (Novaluron)	499-557	BASF

Mike Strain, DVM
Commissioner

1710#070

POTPOURRI

Department of Agriculture and Forestry Office of Agricultural and Environmental Sciences

Supplement to Annual Quarantine Listing for 2017
Sweet Potato Weevil (LAC 7:XV.Chapter 1)

In accordance with the Administrative Procedures Act, R.S. 49:950 et seq., R.S. 3:1652, R.S. 3:1732 and LAC 7:XV:107 and 109 the annual quarantine listing for 2017 is being supplemented to include the following quarantines and locations.

1.0 Sweetpotato Weevil (*Cylas formicarius elegantulus* Sum)

- (a). ...
- (b). In the State of Louisiana:
 - 1). ...
 - 2). The properties located at the following coordinates: 32.00051667, -91.64129722 and any properties within a 300-yard radius of these coordinates.

15.0 Emerald Ash Borer (*Agrilus planipennis*)

Infested parishes: Bienville, Jackson, and Morehouse

Mike Strain, DVM
Commissioner

1710#033

POTPOURRI

Department of Environmental Quality Office of the Secretary Legal Affairs and Criminal Investigations Division

Public Hearing—Substantive Changes to
Proposed Rule AQ348
Regulatory Permit for Storage Vessels
(LAC 33:III.321)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that the department is seeking to incorporate substantive changes to proposed regulation LAC 33:III.321 (Log # AQ348S), which was originally noticed as AQ348 in the June 20, 2017, issue of the *Louisiana Register*. (1710Pot1)

The department has proposed substantive changes to address comments received during the public comment period of proposed Rule AQ348. The changes require storage vessels authorized by the regulatory permit to be included in the next renewal or modification of the stationary source's existing permit and amend the list of federal and state regulations to which eligible storage vessels may be subject to include LAC 33:III.2131 and 40 CFR 63 subparts OO, SS, WW, YY, EEEE, and NNNNN.

In the interest of clarity and transparency, the department is providing public notice and opportunity to comment on the proposed changes to the amendments of the regulation in question. The department is also providing an interim response to comments received on the initial regulation proposal.

A strikeout/underline/shaded version of the proposed rule that distinguishes original proposed language from language changed by this proposal and the interim response to comments are available on the department's website under Rules and Regulations at <http://deq.louisiana.gov/page/rules-regulations>.

The following changes are to be incorporated into the Notice of Intent.

Title 33 ENVIRONMENTAL QUALITY Part III. Air

Chapter 3. Regulatory Permits

§321. Regulatory Permit for Storage Vessels

A. - C.3. ...

D. Storage Vessel Standards. The permittee shall comply with the provisions of the following federal and state regulations pertaining to storage vessels, as applicable:

1. LAC 33:III.2103 and 2131;
2. 40 CFR 60, subpart Kb;
3. 40 CFR 61, subpart FF; and
4. 40 CFR 63, subparts G, R, U, CC, OO, SS, WW, YY, JJJ, PPP, EEEE, FFFF, HHHHH, NNNNN, BBBB, CCCCC, VVVVVV, and HHHHHH.

E. - H. ...

I. Storage vessels authorized by this regulatory permit shall be included in the next renewal or modification of the stationary source's existing permit.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 43:

Public Comments

All interested persons are also invited to submit written comments on the substantive changes. Persons commenting should reference this proposed regulation as AQ348S. Such comments must be received no later than November 29, 2017, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Affairs and Criminal Investigations Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or e-mailed to deidra.johnson@la.gov. The comment period for the substantive changes ends on the same date as the public hearing. Copies of these substantive changes can be purchased by contacting the DEQ Public Records Center at

(225) 219-3168. Check or money order is required in advance for each copy of AQ348S. These proposed regulations are available on the internet at <http://deq.louisiana.gov/page/rules-regulations>.

Public Hearing

A public hearing on the substantive changes will be held on November 29, 2017, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 North Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the substantive changes. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

These substantive changes to AQ348 are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 North Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; and 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

Herman Robinson
General Counsel

1710#027

POTPOURRI

Department of Health Bureau of Health Services Financing

2018 Second Quarter Hospital Stabilization Assessment

In compliance with House Concurrent Resolution (HCR) 51 of the 2016 Regular Session of the Louisiana Legislature, the Department of Health, Bureau of Health Services Financing amended the provisions governing provider fees to establish hospital assessment fees and related matters (*Louisiana Register*, Volume 42, Volume 11).

House Concurrent Resolution 8 of the 2017 Regular Session of the Louisiana Legislature enacted an annual hospital stabilization formula and directed the Department of Health to calculate, levy and collect an assessment for each assessed hospital.

The Department of Health shall calculate, levy and collect a hospital stabilization assessment in accordance with HCR 8. For the quarter beginning October 1, 2017 through December 31, 2017, the quarterly assessment amount to all hospitals will be \$10,515,959. This amounts to 0.0927246 percent of total inpatient and outpatient hospital net patient revenue of the assessed hospitals.

Rebekah E. Gee MD, MPH
Secretary

1710#059

POTPOURRI

Department of Health Bureau of Health Services Financing and Office for Citizens with Developmental Disabilities

Public Hearing—Substantive Changes to Proposed Rule Home and Community-Based Services Waivers New Opportunities Waiver (LAC 50:XXI.13703 and 13707)

In accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Health, Bureau of Health Services Financing and the Office for Citizens with Developmental Disabilities published a Notice of Intent in the August 20, 2017 edition of the *Louisiana Register* (LR 43:1672-1682) to amend LAC 50:XXI.Chapters 137-143 in the Medical Assistance Program as authorized by R.S. 36:254 and pursuant to Title XIX of the Social Security Act. This Notice of Intent proposed to amend the provisions governing the New Opportunities Waiver (NOW) in order to align language with the current, approved waiver application, incorporate federal home and community-based settings requirements and clarify current policy.

The department subsequently determined that additional, non-technical revisions were necessary to further clarify the provisions of §13703 and §13707 of the August 20, 2017 proposed Rule. These revisions were published in a Notice of Intent in the September 20, 2017 edition of the *Louisiana Register* (LR 43:1843-1846).

As a result, the department now proposes to sever the proposed amendments to §13703 and §13707 from the provisions of the August 20, 2017 Notice of Intent. No fiscal or economic impact will result from the amendments proposed in this notice.

Public Comments

Interested persons may submit written comments to Jen Steele, Bureau of Health Services Financing, P.O. Box 91030, Baton Rouge, LA 70821-9030 or by email to MedicaidPolicy@la.gov. Ms. Steele is responsible for responding to inquiries regarding these substantive amendments to the proposed Rule. The deadline for receipt of all written comments is 4:30 p.m. on the next business day following the public hearing.

Public Hearing

A public hearing on these substantive changes to the proposed Rule is scheduled for Wednesday, November 29, 2017 at 9:30 a.m. in Room 118, Bienville Building, 628 North Fourth Street, Baton Rouge, LA. At that time all interested persons will be afforded an opportunity to submit data, views or arguments either orally or in writing.

Rebekah E. Gee MD, MPH
Secretary

1710#060

POTPOURRI

Department of Natural Resources Office of Conservation

Groundwater Conservation District Reporting Checklists

In fulfillment of its requirements under Act 425 of the 2017 Regular Session of the Louisiana Legislature, the Department of Natural Resources, Office of Conservation hereby issues a reporting form and checklist, with instructions, for the each of the state's groundwater conservation districts.

Specifically, Act 425 of 2017 mandated that on May 1 and November 1 of each year, "each ground water conservation district created by law or designated as a regional body, pursuant to R.S. 38:3097.4(D)(6), shall submit to the commissioner of conservation, the Water Resources Commission, the Water Management Advisory Task Force, the Senate Committee on Environmental Quality, and the House Committee on Natural Resources and Environment a written report detailing the district's ground water resources and the activities and actions taken with respect to each of the district's powers delineated by laws creating the district." Further, Act 425 noted that these reports "shall also include but not be limited to the amount of water used for residential, commercial or industrial, or agricultural purposes, respectively; actual and projected saltwater intrusion or encroachment; and any current or projected sale of water for use outside the state, including the amount of water so sold and the price paid by each out-of-state user."

Finally, Act 425 mandated that the Commissioner of Conservation "shall ensure submission of the semiannual reports required of the ground water conservation districts by R.S. 38:3097.8," and "shall promulgate a form with a checklist of the pertinent information required to be included in the semi-annual report." If the reports are not submitted in a timely fashion or do not include the pertinent information required, Act 425 authorizes the Commissioner of Conservation to require monthly submissions of reports "until he is satisfied with [their] adequacy and informative nature."

After accepting comments from the two existing groundwater conservation districts, the Office of Conservation has created the required "form with a checklist" for each commission (the Sparta Ground Water Conservation Commission and the Capital Area Ground Water Conservation Commission) based upon the requirements of Act 425. For more information on correspondence, comments, and responses associated with this process, visit <http://dnr.la.gov/act425>. The form with checklist for each commission is listed below.

Act 425 Guidance Form with Checklist for the Sparta Ground Water Conservation District

General Instructions

The purpose of this form with checklist is to ensure proper and complete submission of all information as required under Act 425 of 2017. The requested information shall be provided in an official, written report, with each reporting item clearly identified. It may be that some items can effectively be combined into a single table, chart, spreadsheet, or other graphic; this being the case, please identify the items thus reported. If the district is unable to

provide any of the requested information, an explanation or justification must be provided, subject to acceptance or rejection by the Commissioner of Conservation (attachments may be appended to the official report as needed).

The reports are to be submitted semi-annually, due on May 1 and November 1 of each year. If these reports are found to be deficient in the judgment of the Commissioner of Conservation, subsequent reports will be due on a monthly basis (every 30 days after written and/or electronic notice of such deficiency is provided to the district by the office of conservation) until the reports are deemed acceptable. Any extraordinary or extenuating circumstances that will delay the timely submission of a report shall be communicated to the Office of Conservation as soon as possible along with an expected date for completion.

Please verify the following are provided:

____A. A list showing members and officers of the board of commissioners ("board") of the Sparta Ground Water Conservation District, including the bodies that such members represent and any changes in Board membership over the preceding six months.

____B. Copies of the agendas and minutes and/or summaries of all board meetings and any public hearings heard by the Board, including a list of submissions to the Board, for the preceding six months.

____C. A brief summary of the 1) scope, 2) term, and 3) cost of any cooperative agreements and/or contracts, including funding of scientific investigations, entered into by the Board over the preceding six months, such agreements and/or contracts being relative to the study and/or survey of the groundwater resources in the Sparta District, including:

____1. Recommendations for conservation of groundwater resources within the Sparta District;

____2. Prevention and/or alleviation of damaging/potentially damaging groundwater level drawdowns within the Sparta District;

____3. Prevention and/or alleviation of damaging/potentially damaging land surface subsidence within the Sparta District; and

____4. Prevention and/or alleviation of damaging/potentially damaging groundwater quality degradation, including saltwater encroachment, within the Sparta District.

____D. A narrative description and status update of actual and projected saltwater intrusion/encroachment within the groundwater systems of the Sparta District.

____E. A brief summary of the findings of any scientific investigations relative to the study and/or survey of the groundwater resources in the Sparta District released over the preceding six months, such investigations having been funded in whole or in part by the Board. *Copies of abstracts and links to full reports on-line are acceptable substitutions.*

____F. A summary of any out-of-state groundwater sales originating from within the Sparta District over the preceding six months, showing: 1) volumes of groundwater sold by parish and vendor, 2) the out-of-state entity or entities to which this groundwater was sold, and 3) the price paid for this groundwater. *The Office of Conservation interprets the intent to be limited to out-of-state groundwater sales for the primary purpose of being a source of water for beneficial use (bulk water) and not to include groundwater*

utilized within the Sparta District or the State of Louisiana in the production of manufactured goods for commercial and/or industrial use or sale, such as beverages, solvents, gasoline, or other processed items.

____G. A summary of volumes of groundwater used for 1) residential, 2) commercial or industrial, and 3) agricultural purposes within the Sparta District during the preceding six months. The amounts used for industrial and agricultural purposes may be estimated. *For residential volumes, the Office of Conservation will accept numbers generated utilizing standard U.S. Geological Survey formulas for individual consumption.*

Act 425 Guidance Form with Checklist for the Capital Area Ground Water Conservation District

General Instructions

The purpose of this form with checklist is to ensure proper and complete submission of all information as required under Act 425 of 2017. The requested information shall be provided in an official, written report, with each reporting item clearly identified. It may be that some items can effectively be combined into a single table, chart, spreadsheet, or other graphic; this being the case, please identify the items thus reported. If the District is unable to provide any of the requested information, an explanation or justification must be provided, subject to acceptance or rejection by the Commissioner of Conservation (attachments may be appended to the official report as needed).

The reports are to be submitted semi-annually, due on May 1 and November 1 of each year. If these reports are found to be deficient in the judgment of the Commissioner of Conservation, subsequent reports will be due on a monthly basis (every 30 days after written and/or electronic notice of such deficiency is provided to the District by the Office of Conservation) until the reports are deemed acceptable. Any extraordinary or extenuating circumstances that will delay the timely submission of a report shall be communicated to the Office of Conservation as soon as possible along with an expected date for completion.

For each report, please verify the following are provided:

____A. A list showing members and officers of the board of commissioners ("Board") of the Capital Area Ground Water Conservation District ("CAGWCD"), including the bodies that such members represent and any changes in Board membership over the preceding six months.

____B. Copies of the agendas and minutes and/or summaries of all Board meetings and any public hearings conducted by the Board, including a list of submissions to the Board, for the preceding six months.

____C. A brief summary of the 1) scope, 2) term, and 3) cost of any cooperative agreements and/or contracts, including funding of scientific investigations, entered into by the Board over the preceding six months, such agreements and/or contracts being relative to the study and/or survey of the groundwater resources in the CAGWCD, including:

____1. Recommendations for conservation of groundwater resources within the CAGWCD;

____2. Prevention and/or alleviation of damaging/potentially damaging groundwater level drawdowns within the CAGWCD;

____3. Prevention and/or alleviation of damaging/potentially damaging land surface subsidence within the CAGWCD; and

____4. Prevention and/or alleviation of damaging/potentially damaging groundwater quality degradation, including saltwater encroachment, within the CAGWCD.

____D. A narrative description and status update of actual and projected saltwater intrusion/encroachment within the groundwater systems of the CAGWCD.

____E. A narrative description and status update of any actual and projected land surface subsidence within the CAGWCD.

____F. Copies of updated CAGWCD management plans and/or other strategy documents adopted by the Board relative to the study, mitigation, and/or general management of groundwater resources, saltwater intrusion, and land subsidence within the CAGWCD. *After the first report submission, such documents may be submitted once annually at the discretion of the Board.*

____G. A narrative summary and scientific analysis (if available) detailing the operational status and effectiveness of any structures installed within the groundwater systems of the CAGWCD to mitigate and/or otherwise manage actual and projected saltwater intrusion/encroachment.

____H. A brief summary of the findings of any scientific investigations relative to the study and/or survey of groundwater resources and land subsidence in the CAGWCD released over the preceding six months, such investigations having been funded in whole or in part by the Board. *Copies of abstracts and links to full reports on-line are acceptable substitutions.*

____I. A description of existing groundwater production limits within the CAGWCD as authorized by the Board, identifying 1) the date such limits were adopted, 2) the reason(s) for adoption of such limits, 3) the production limits by aquifer, and 4) the production limits by regulated user. *Here and hereinafter, "user" as defined by R.S. 38:3073.*

____J. A list of existing regulated users within the CAGWCD.

____K. The total regulated groundwater pumping volume for each regulated user within the CAGWCD over the preceding six months. This list should show for each regulated user: 1) the total regulated groundwater pumping volume; 2) the classification by use (according to CAGWCD statutes and rules) of this pumping volume; 3) the parish location of this regulated groundwater production; and 4) the source, by aquifer(s), of this regulated groundwater production.

____L. The current charge or fee assessed on regulated groundwater use within the CAGWCD.

____M. The total groundwater use assessment (fee) imposed on each regulated user over the preceding six (6) months.

____N. A list identifying new wells permitted and/or installed within the CAGWCD according to its statutes and rules over the preceding six (6) months, showing for each new well: 1) its owner; 2) its classification by use; 3) its location by parish; 4) its location by aquifer; and 5) its actual and/or projected annual groundwater pumping volume.

____O. A list identifying permitted wells plugged and abandoned (P and A) according to CAGWCD statutes and rules over the preceding six months, showing for each P&A well: 1) its owner; 2) its classification by use; 3) its location by parish; 4) its location by aquifer; and 5) its former annual groundwater pumping volume.

____P. A summary of any out-of-state groundwater sales from the CAGWCD over the preceding six months, showing: 1) vendor; 2) volumes of groundwater produced and sold; 3) parishes of production; 4) out-of-state entity or entities to which groundwater was sold; and 5) the price paid for this groundwater. *The Office of Conservation interprets the intent to be limited to out-of-state groundwater sales for the primary purpose of being a source of water for beneficial use (bulk water) and not to include groundwater utilized within the CAGWCD or the State of Louisiana in the production of manufactured goods for commercial and/or industrial use or sale, such as beverages, solvents, gasoline, or other processed items.*

____Q. A summary of volumes of groundwater pumped from within the CAGWCD during the preceding six months and transported out-of-district as part of a public supply or industrial distribution system. For each regulated user thus engaged, indicate: 1) total volume of groundwater produced for out-of-district distribution; 2) parish of production; and 3) end distribution point, by parish.

____R. A summary of volumes of groundwater used for 1) residential, 2) commercial or industrial, and 3) agricultural purposes within the CAGWCD during the preceding six months. The amounts used for industrial and agricultural purposes may be estimated. *For residential volumes, the Office of Conservation will accept numbers generated utilizing standard U.S. Geological Survey formulas for individual consumption.*

Richard P. Ieyoub
Commissioner

1710#074

POTPOURRI

Department of Natural Resources Office of Conservation

Orphaned Oilfield Sites

Office of Conservation records indicate that the Oilfield Sites listed in the table below have met the requirements as set forth by Section 91 of Act 404, R.S. 30:80 et seq., and as such are being declared Orphaned Oilfield Sites.

Operator	Field	District	Well Name	Well Number	Serial Number
Kilroy Co Of Texas, Inc.	Wildcat-So La Houma Dist	L	City of New Orleans	001	145435
J. C. Trahan Drlg. Contr Inc.	Wildcat-So La Houma Dist	L	Lafourche Realty Company	004	86336
C. F. Braun & Company	Wildcat-So La Houma Dist	L	City of New Orleans	001	160450
Unknown	Caddo Pine	S	Darnsdall	003	990484

Operator	Field	District	Well Name	Well Number	Serial Number
	Island				
Eidos Energy, Inc.	North Bon Air	L	John R Higgins	001	236745
Johnny May	Wildcat-No La Monroe Dist	M	George C Yarbrough et al A	001	163442
Marie Parker	Monroe	M	Russell	001	142791
Ross Exploration, Inc.	Caddo Pine Island	S	Goodwin	004	24920
Sunray Mid-Continent Oil Co	Wildcat-So La Lafayette Dist	L	Theo Smith Patrick	001	56479
Baby Oil, Inc.	Orange Grove	L	Wylie Heirs	010	220286
Baby Oil, Inc.	Humphreys	L	Herbert Cox et al	002	215891
Baby Oil, Inc.	Orange Grove	L	Hlywd 1 Ra Sua; Robert Cox	001-ALT	153307
Baby Oil, Inc.	Orange Grove	L	Hlywd 1 Ra Sua; O H Wylie Heirs	003	140143
Baby Oil, Inc.	Humphreys	L	Realty Ra Sua; Morris Blanchard	002	173356
Baby Oil, Inc.	Ouiski Bayou	L	Re Ra Sua; T Goldsby	003	222386
Baby Oil, Inc.	Orange Grove	L	Wylie Heirs	012	221808
Baby Oil, Inc.	Orange Grove	L	Bourg Rb Sua; Bergeron	001	209519
Baby Oil, Inc.	Humphreys	L	Tex W-2 Ra Sua; J C Walker	1	223756
Baby Oil, Inc.	Humphreys	L	Hlywd 1 Rf Sua; Wylie	001	148013
Baby Oil, Inc.	Ouiski Bayou	L	Cib O Ra Sua; T Goldsby	002	215371
Baby Oil, Inc.	Orange Grove	L	Hlywd 1 Ra Sua; O H Wylie Heirs	006-ALT	213261
Baby Oil, Inc.	Orange Grove	L	Bourg Ra Sua; Succ Lillie C Cox	005	216924
Baby Oil, Inc.	Orange Grove	L	Orange Grove Swd	001	144271
Baby Oil, Inc.	Humphreys	L	L D Riggs et al	015	217522
Baby Oil, Inc.	Humphreys	L	L D Riggs et al	013	214169
Baby Oil, Inc.	Humphreys	L	Hlywd 1 Re Sua; L D Riggs Et al	011-ALT	214149
Baby Oil, Inc.	Orange Grove	L	Wylie Heirs	009	225170
Baby Oil, Inc.	Humphreys	L	Hlywd 1 Rc Sua; L D Riggs Ea 88	001-ALT	216270

Operator	Field	District	Well Name	Well Number	Serial Number
Baby Oil, Inc.	Orange Grove	L	Wylie Heirs	012-D	222118
Baby Oil, Inc.	Orange Grove	L	Wylie Heirs	011	220657
Baby Oil, Inc.	Orange Grove	L	Melba Gill et al	001	215881
Baby Oil, Inc.	Ouisi Bayou	L	Ll Ra Sua; Salvador Casente	001	215001
Baby Oil, Inc.	Orange Grove	L	Realty Rb Sua; E Bergeron	003	214764
Baby Oil, Inc.	Orange Grove	L	Hlywd 1 Rc Sua; Bergeron	001	199705
Baby Oil, Inc.	Crescent Farms	L	12300 Ra Sua; Robert Cox 51	001	212954
Baby Oil, Inc.	Humphreys	L	Herbert Cox Etal	001	211469
Baby Oil, Inc.	Humphreys	L	Hlywd 1 Re Sua; L D Riggs Et al	008	212741
Baby Oil, Inc.	Humphreys	L	Riggs	007	177737
Baby Oil, Inc.	Humphreys	L	L D Riggs Swd	006	154523
Baby Oil, Inc.	Ouisi Bayou	L	Kk Ra Sua; T Goldsby	001	214255
Baby Oil, Inc.	Orange Grove	L	L Cox Swd	001	213276
Baby Oil, Inc.	Humphreys	L	L D Riggs et al	009	214072
Baby Oil, Inc.	Orange Grove	L	Freddie Cox	001	210533
T & M Production	Caddo Pine Island	S	Rives Swd	006	11084
T & M Production	Caddo Pine Island	S	Pardue	040	25409
T & M Production	Caddo Pine Island	S	Pardue	041	25481
T & M Production	Caddo Pine Island	S	Pardue	042	25482
T & M Production	Caddo Pine Island	S	Pardue	043	25541
T & M Production	Caddo Pine Island	S	Pardue	044	25649
T & M Production	Caddo Pine Island	S	Pardue	045	25650
T & M Production	Caddo Pine Island	S	Pardue	046	25651
T & M Production	Caddo Pine Island	S	Pardue	047	25879
T & M Production	Caddo Pine Island	S	Pardue	048	25978
T & M Production	Caddo Pine Island	S	Pardue	049	26030
T & M Production	Caddo Pine Island	S	Pardue	050	26125
T & M Production	Caddo Pine Island	S	Pardue	051	26158

Operator	Field	District	Well Name	Well Number	Serial Number
T & M Production	Caddo Pine Island	S	Noel Estate	001	33467
T & M Production	Caddo Pine Island	S	Noel Estate	002	33583
T & M Production	Caddo Pine Island	S	Noel Estate	003	33640
T & M Production	Caddo Pine Island	S	Noel Estate	004	33733
T & M Production	Caddo Pine Island	S	Noel Estate	005	33783
T & M Production	Caddo Pine Island	S	Pardue	089	35927
T & M Production	Caddo Pine Island	S	Pardue	090	36173
T & M Production	Caddo Pine Island	S	Pardue	091	36356
T & M Production	Caddo Pine Island	S	Pardue	092	36357
T & M Production	Caddo Pine Island	S	Pardue	093	36358
T & M Production	Caddo Pine Island	S	Pardue	094	36359
T & M Production	Caddo Pine Island	S	Pardue	095	36360
T & M Production	Caddo Pine Island	S	Pardue	096	36362
T & M Production	Caddo Pine Island	S	Pardue	097	36363
T & M Production	Caddo Pine Island	S	Pardue	098	36364
T & M Production	Caddo Pine Island	S	Pardue	099	36874
T & M Production	Caddo Pine Island	S	Pardue	052	36930
T & M Production	Caddo Pine Island	S	Pardue	100	37383
T & M Production	Caddo Pine Island	S	Pardue	101	37386
T & M Production	Caddo Pine Island	S	Pardue	102	37387
T & M Production	Caddo Pine Island	S	Pardue	053	37564
T & M Production	Caddo Pine Island	S	Pardue	103	37744
T & M Production	Caddo Pine Island	S	Pardue Weaver Swd	034	37994
T & M Production	Caddo Pine Island	S	Pardue	104	38082
T & M Production	Caddo Pine Island	S	Pardue	105	38120
T & M Production	Caddo Pine Island	S	Crawford	003	39092
T & M Production	Caddo Pine	S	Pardue	054	39485

Operator	Field	District	Well Name	Well Number	Serial Number
	Island				
T & M Production	Caddo Pine Island	S	Pardue	055	39684
T & M Production	Caddo Pine Island	S	Pardue	002	40028
T & M Production	Caddo Pine Island	S	Pardue	003	40029
T & M Production	Caddo Pine Island	S	Pardue	056	40089
T & M Production	Caddo Pine Island	S	Pardue	057	40103
T & M Production	Caddo Pine Island	S	Pardue	004	40149
T & M Production	Caddo Pine Island	S	Pardue	006	40150
T & M Production	Caddo Pine Island	S	Pardue	005	40151
T & M Production	Caddo Pine Island	S	Pardue	007	40178
T & M Production	Caddo Pine Island	S	Pardue	008	40324
T & M Production	Caddo Pine Island	S	Pardue	009	40509
T & M Production	Caddo Pine Island	S	Pardue	010	40510
T & M Production	Caddo Pine Island	S	Pardue	011	40511
T & M Production	Caddo Pine Island	S	Pardue	012	40512
T & M Production	Caddo Pine Island	S	Pardue	013	40513
T & M Production	Caddo Pine Island	S	Pardue	014	40514
T & M Production	Caddo Pine Island	S	Pardue	015	40740
T & M Production	Caddo Pine Island	S	Pardue	016	40741
T & M Production	Caddo Pine Island	S	Pardue	017	40742
T & M Production	Caddo Pine Island	S	Crawford	006	40751
T & M Production	Caddo Pine Island	S	Pardue	058	40778
T & M Production	Caddo Pine Island	S	Pardue	059	40779
T & M Production	Caddo Pine Island	S	Pardue	106	41040
T & M Production	Caddo Pine Island	S	Pardue	107	41415
T & M Production	Caddo Pine Island	S	Pardue	018	42838
T & M Production	Caddo Pine Island	S	Pardue	060	42864

Operator	Field	District	Well Name	Well Number	Serial Number
T & M Production	Caddo Pine Island	S	Pardue	108	42915
T & M Production	Caddo Pine Island	S	Pardue	109	43296
T & M Production	Caddo Pine Island	S	Gamm Swd	002	43994
T & M Production	Caddo Pine Island	S	Gamm	003	43995
T & M Production	Caddo Pine Island	S	Gamm	004	44071
T & M Production	Caddo Pine Island	S	Gamm	005	44103
T & M Production	Caddo Pine Island	S	Gamm	007	44248
T & M Production	Caddo Pine Island	S	Gamm	008	44341
T & M Production	Caddo Pine Island	S	Pardue	110	45807
T & M Production	Caddo Pine Island	S	Pardue	061	46212
T & M Production	Caddo Pine Island	S	Stiles E	003	47070
T & M Production	Caddo Pine Island	S	Stiles E	004	47256
T & M Production	Caddo Pine Island	S	Pardue Christian	001	49799
T & M Production	Caddo Pine Island	S	Pardue Christian	002	49800
T & M Production	Caddo Pine Island	S	Pardue Christian	003	49801
T & M Production	Caddo Pine Island	S	Pardue	019	50644
T & M Production	Caddo Pine Island	S	Crawford	001	51664
T & M Production	Caddo Pine Island	S	Noel Estate	007	52197
T & M Production	Caddo Pine Island	S	Noel Estate	006	52198
T & M Production	Caddo Pine Island	S	Pardue Christian	005	52608
T & M Production	Caddo Pine Island	S	Pardue	062	52724
T & M Production	Caddo Pine Island	S	Pardue	063	53049
T & M Production	Caddo Pine Island	S	Pardue	064	53444
T & M Production	Caddo Pine Island	S	Noel Estate	008	53596
T & M Production	Caddo Pine Island	S	Noel Estate	010	53597
T & M Production	Caddo Pine Island	S	Pardue	022	53750
T & M Production	Caddo Pine	S	Pardue	020	53751

Operator	Field	District	Well Name	Well Number	Serial Number
	Island				
T & M Production	Caddo Pine Island	S	Pardue	065	53754
T & M Production	Caddo Pine Island	S	Pardue	024	53851
T & M Production	Caddo Pine Island	S	Pardue Christian	007	54056
T & M Production	Caddo Pine Island	S	Pardue	066	54059
T & M Production	Caddo Pine Island	S	Pardue Christian	009	54199
T & M Production	Caddo Pine Island	S	Pardue	067	54246
T & M Production	Caddo Pine Island	S	Pardue Christian	011	54321
T & M Production	Caddo Pine Island	S	Gamm	009	54331
T & M Production	Caddo Pine Island	S	Pardue	068	54428
T & M Production	Caddo Pine Island	S	Crawford	002	54435
T & M Production	Caddo Pine Island	S	Pardue	032	54444
T & M Production	Caddo Pine Island	S	Pardue	069	54453
T & M Production	Caddo Pine Island	S	Pardue	034	54540
T & M Production	Caddo Pine Island	S	Pardue	030	54722
T & M Production	Caddo Pine Island	S	Pardue	026	54812
T & M Production	Caddo Pine Island	S	Pardue	028	54894
T & M Production	Caddo Pine Island	S	Pardue Christian	006	55105
T & M Production	Caddo Pine Island	S	Crawford	004	55163
T & M Production	Caddo Pine Island	S	Pardue Christian	004	55213
T & M Production	Caddo Pine Island	S	Noel Estate	009	55217
T & M Production	Caddo Pine Island	S	Noel Estate	011	55218
T & M Production	Caddo Pine Island	S	Noel Estate	012	55219
T & M Production	Caddo Pine Island	S	Pardue	023	55225
T & M Production	Caddo Pine Island	S	Pardue	031	55226
T & M Production	Caddo Pine Island	S	Pardue Christian	013	55227
T & M Production	Caddo Pine Island	S	Pardue Christian	016	55419

Operator	Field	District	Well Name	Well Number	Serial Number
T & M Production	Caddo Pine Island	S	Pardue	033	55424
T & M Production	Caddo Pine Island	S	Pardue	029	55425
T & M Production	Caddo Pine Island	S	Pardue Christian	015	55426
T & M Production	Caddo Pine Island	S	Pardue	027	55610
T & M Production	Caddo Pine Island	S	Pardue	035	55660
T & M Production	Caddo Pine Island	S	Pardue	036	55661
T & M Production	Caddo Pine Island	S	Pardue	070	57507
T & M Production	Caddo Pine Island	S	Noel Estate	014	58660
T & M Production	Caddo Pine Island	S	Noel Estate	015	58749
T & M Production	Caddo Pine Island	S	Pardue	071	58809
T & M Production	Caddo Pine Island	S	Pardue	072	59178
T & M Production	Caddo Pine Island	S	Pardue	073	59531
T & M Production	Caddo Pine Island	S	Pardue	074	59784
T & M Production	Caddo Pine Island	S	Pardue	075	61001
T & M Production	Caddo Pine Island	S	Pardue	076	61002
T & M Production	Caddo Pine Island	S	Pardue	111	61838
T & M Production	Caddo Pine Island	S	Pardue	077	61936
T & M Production	Caddo Pine Island	S	Pardue	078	62403
T & M Production	Caddo Pine Island	S	Pardue	079	62404
T & M Production	Caddo Pine Island	S	Pardue	112	62711
T & M Production	Caddo Pine Island	S	Pardue	113	62712
T & M Production	Caddo Pine Island	S	Pardue	080	63527
T & M Production	Caddo Pine Island	S	Pardue	081	64268
T & M Production	Caddo Pine Island	S	Pardue	082	64441
T & M Production	Caddo Pine Island	S	Pardue	083	65211
T & M Production	Caddo Pine Island	S	Noel Estate	013	65358
T & M Production	Caddo Pine	S	Pardue	084	65432

Operator	Field	District	Well Name	Well Number	Serial Number
	Island				
T & M Production	Caddo Pine Island	S	Pardue	085	65465
T & M Production	Caddo Pine Island	S	Pardue	086	66669
T & M Production	Caddo Pine Island	S	Gamm	010	67585
T & M Production	Caddo Pine Island	S	Pardue	087	70625
T & M Production	Caddo Pine Island	S	Noel Estate	016	76660
T & M Production	Caddo Pine Island	S	Gamm	011	103239
T & M Production	Caddo Pine Island	S	Gamm	012	104243
T & M Production	Caddo Pine Island	S	Gamm	013	104331
T & M Production	Caddo Pine Island	S	Pardue	122	108792
T & M Production	Caddo Pine Island	S	Pardue	088	111077
T & M Production	Caddo Pine Island	S	Gamm	014	111742
T & M Production	Caddo Pine Island	S	Gamm	015	111789
T & M Production	Caddo Pine Island	S	Gamm	016	112186
T & M Production	Caddo Pine Island	S	Gamm	017	112187
T & M Production	Caddo Pine Island	S	Gamm	018	112188
T & M Production	Caddo Pine Island	S	Pardue	037	117875
T & M Production	Caddo Pine Island	S	Pardue Christian	017	117957
T & M Production	Caddo Pine Island	S	Pardue Christian	018	117958
T & M Production	Caddo Pine Island	S	Pardue Christian	019	117959
T & M Production	Caddo Pine Island	S	Gamm	019	118414
T & M Production	Caddo Pine Island	S	Stiles 2c	004	136912
T & M Production	Caddo Pine Island	S	Stiles 2c	005	136913
T & M Production	Caddo Pine Island	S	Stiles 2c	006	136914
T & M Production	Caddo Pine Island	S	Stiles 2c	007	137384
T & M Production	Caddo Pine Island	S	Stiles 2c	008	137385
T & M Production	Caddo Pine Island	S	Stiles 2c	009	137386

Operator	Field	District	Well Name	Well Number	Serial Number
T & M Production	Caddo Pine Island	S	Stiles 2c	001	138110
T & M Production	Caddo Pine Island	S	Stiles 2c	002	138111
T & M Production	Caddo Pine Island	S	Stiles 2c	003	138112
T & M Production	Caddo Pine Island	S	Stiles U	002	139072
T & M Production	Caddo Pine Island	S	Stiles U	003	139073
T & M Production	Caddo Pine Island	S	Stiles U	004	139074
T & M Production	Caddo Pine Island	S	Stiles Z	002	139113
T & M Production	Caddo Pine Island	S	Stiles F	001	139565
T & M Production	Caddo Pine Island	S	Stiles F	002	139566
T & M Production	Caddo Pine Island	S	Stiles Z	004	140259
T & M Production	Caddo Pine Island	S	Stiles	001	141517
T & M Production	Caddo Pine Island	S	Stiles	002	141663
T & M Production	Caddo Pine Island	S	Stiles	003	141779
T & M Production	Caddo Pine Island	S	Stiles C	006	141780
T & M Production	Caddo Pine Island	S	Stiles C	007	141781
T & M Production	Caddo Pine Island	S	Stiles C	008	141782
T & M Production	Caddo Pine Island	S	Stiles C	009	141783
T & M Production	Caddo Pine Island	S	Stiles C	010	141784
T & M Production	Caddo Pine Island	S	Stiles G	001	141869
T & M Production	Caddo Pine Island	S	Stiles G	002	141870
T & M Production	Caddo Pine Island	S	Stiles G	003	141871
T & M Production	Caddo Pine Island	S	Stiles H	004	141896
T & M Production	Caddo Pine Island	S	Stiles H	005	141897
T & M Production	Caddo Pine Island	S	Stiles H	006	141898
T & M Production	Caddo Pine Island	S	Stiles C	011	142245
T & M Production	Caddo Pine Island	S	Stiles C	012	142246
T & M Production	Caddo Pine	S	Stiles C	013	142247

Operator	Field	District	Well Name	Well Number	Serial Number
	Island				
T & M Production	Caddo Pine Island	S	Stiles C	014	142248
T & M Production	Caddo Pine Island	S	Stiles C	015	142249
T & M Production	Caddo Pine Island	S	Stiles Z	003	142445
T & M Production	Caddo Pine Island	S	Stiles C	001	142565
T & M Production	Caddo Pine Island	S	Stiles C	002	142566
T & M Production	Caddo Pine Island	S	Stiles C	003	142567
T & M Production	Caddo Pine Island	S	Stiles C	004	142568
T & M Production	Caddo Pine Island	S	Stiles C	005	142569
T & M Production	Caddo Pine Island	S	Stiles	004	142710
T & M Production	Caddo Pine Island	S	Stiles H	001	142938
T & M Production	Caddo Pine Island	S	Stiles H	002	142939
T & M Production	Caddo Pine Island	S	Stiles H	003	142940
T & M Production	Caddo Pine Island	S	Stiles E	001	143366
T & M Production	Caddo Pine Island	S	Stiles E	002	143367
T & M Production	Caddo Pine Island	S	Stiles K	001	143401
T & M Production	Caddo Pine Island	S	Stiles K	002	143808
T & M Production	Caddo Pine Island	S	Stiles Swd	001	144209
T & M Production	Caddo Pine Island	S	Stiles U	005	144452
T & M Production	Caddo Pine Island	S	Stiles U	001	144845
T & M Production	Caddo Pine Island	S	Stiles U	006	144872
T & M Production	Caddo Pine Island	S	Stiles U	007	144873
T & M Production	Caddo Pine Island	S	Stiles F	004	144874
T & M Production	Caddo Pine Island	S	Stiles F	003	144875
T & M Production	Caddo Pine Island	S	Stiles Z	001	147034
T & M Production	Caddo Pine Island	S	Pardue-Christian A	001	170918
T & M Production	Caddo Pine Island	S	Pardue-Christian A	004	172697

Operator	Field	District	Well Name	Well Number	Serial Number
T & M Production	Caddo Pine Island	S	E E Robertson	002	174601
T & M Production	Caddo Pine Island	S	Pardue-Christian A	002	178284
T & M Production	Caddo Pine Island	S	Pardue-Christian A	003	178285
T & M Production	Caddo Pine Island	S	Gamm	022	179003
T & M Production	Caddo Pine Island	S	Gault	001	179256
T & M Production	Caddo Pine Island	S	Gault	002	179257
T & M Production	Caddo Pine Island	S	Gamm	023	179997
T & M Production	Caddo Pine Island	S	Gamm	024	180950
T & M Production	Caddo Pine Island	S	Gault	003	183850
T & M Production	Caddo Pine Island	S	Gault	004	183851
T & M Production	Caddo Pine Island	S	Gault	005	183852
T & M Production	Caddo Pine Island	S	Gault	006	183853
T & M Production	Caddo Pine Island	S	Gault A Swd	001	183854
T & M Production	Caddo Pine Island	S	Gault	007	183855
T & M Production	Caddo Pine Island	S	Pardue-Christian A	005	184121
T & M Production	Caddo Pine Island	S	Gault	008	184511
T & M Production	Caddo Pine Island	S	Gault	009	184512
T & M Production	Caddo Pine Island	S	Gault	010	186495
T & M Production	Caddo Pine Island	S	E E Robertson	004	186670
T & M Production	Caddo Pine Island	S	Gault	011	187161
T & M Production	Caddo Pine Island	S	Pet Re Sua;Clancy	001	191519
T & M Production	Caddo Pine Island	S	Pardue	114	194512
T & M Production	Caddo Pine Island	S	Pardue	115	194513
T & M Production	Caddo Pine Island	S	Pardue	116	194514
T & M Production	Caddo Pine Island	S	Pardue	117	194515
T & M Production	Caddo Pine Island	S	Pardue	118	194516
T & M Production	Caddo Pine	S	Pardue	119	194517

Operator	Field	District	Well Name	Well Number	Serial Number
	Island				
T & M Production	Caddo Pine Island	S	Pardue	120	194518
T & M Production	Caddo Pine Island	S	Dixon-Stiles Swd	001	194894
T & M Production	Caddo Pine Island	S	Dixon-Stiles	005	194895
T & M Production	Caddo Pine Island	S	Dixon-Stiles	006	194896
T & M Production	Caddo Pine Island	S	Dixon-Stiles	007	194897
T & M Production	Caddo Pine Island	S	Dixon-Stiles	008	194898
T & M Production	Caddo Pine Island	S	Dixon-Stiles	009	194899
T & M Production	Caddo Pine Island	S	Dixon-Stiles	010	194900
T & M Production	Caddo Pine Island	S	Dixon-Stiles	011	194955
T & M Production	Caddo Pine Island	S	Dixon-Stiles	012	194956
T & M Production	Caddo Pine Island	S	Dixon-Stiles	013	194957
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Operator	Field	District	Well Name	Well Number	Serial Number
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T & M Production	Caddo Pine Island	S	Pardue-Christian A	007	196599
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	001	199633
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	002	199674
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	003	199675
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	004	199676
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	005	199677
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T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	009	199681
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	010	200091
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	011	200092
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	012	200093
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T & M Production	Caddo Pine Island	S	Pardue	123	200467
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T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	014	201513
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	015	201514
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	016	201515
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T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	019	201686
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow	020	201687
T & M Production	Caddo Pine	S	Gault	012	201730

Operator	Field	District	Well Name	Well Number	Serial Number
	Island				
T & M Production	Caddo Pine Island	S	Gault	013	201731
T & M Production	Caddo Pine Island	S	Woodall-Stringfellow Swd	021	201769
T & M Production	Caddo Pine Island	S	Crawford	007	201999
T & M Production	Caddo Pine Island	S	Crawford	008	202000
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T & M Production	Caddo Pine Island	S	Gault	016	213796
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T & M Production	Caddo Pine Island	S	Stiles Swd	002	970312
T & M Production	Caddo Pine Island	S	Stiles C Swd	002	974024

Operator	Field	District	Well Name	Well Number	Serial Number
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Richard P. Ieyoub
Commissioner

1710#042

POTPOURRI

Department of Natural Resources Office of Conservation Environmental Division

Commercial Deep Well Injection Waste Disposal Facility—Exploration and Production Waste

Notice is hereby given that the commissioner of conservation will conduct a hearing at 6 p.m., Thursday, November 30, 2017, at the DeSoto Parish Police Jury Building, located at 101 Franklin Street, Police Jury Meeting Room, Mansfield, LA.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of Bulldog Oilfield Services, Inc., P.O. Box 78777, Shreveport, LA 71137. The applicant requests approval from the Office of Conservation to construct and operate a commercial deep well injection waste disposal facility for disposal of exploration and production waste (E and P waste) fluids located in Section 9, Township 14 North, Range 13 West in DeSoto Parish.

The application is available for inspection by contacting Mr. Stephen Olivier, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617 North Third Street, Baton Rouge, LA. Copies of the application will be available for review at the DeSoto Parish Police Jury building or the DeSoto Parish Public Library in Mansfield, LA no later than 30 days prior to the hearing date. Verbal information may be received by calling Mr. Olivier at (225) 342-7394.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Monday, December 11, 2017, at the Baton Rouge office. Comments should be directed to:

Office of Conservation
Environmental Division
P.O. Box 94275
Baton Rouge, Louisiana 70804
Re: Docket No. ENV 2017-01
Commercial Facility Well Application
DeSoto Parish

Richard P. Ieyoub
Commissioner

1710#012

POTPOURRI
Department of Natural Resources
Office of Conservation
Environmental Division

Commercial Type A Treatment Facility for
Storage and Treatment of Exploration and Production Waste

Notice is hereby given that the commissioner of conservation will conduct a hearing at 6 p.m., Thursday, December 7, 2017, at the Lafourche Parish Government, Mathews Complex, 4876 Hwy 1, Mathews, LA.

At such hearing, the commissioner, or his designated representative, will hear testimony relative to the application of ecoserv Environmental Services, LLC, 9525 US Hwy 167 North, Abbeville, LA 70510. The applicant requests approval from the Office of Conservation to construct and operate a commercial type A treatment facility for storage and treatment of exploration and production waste (E and P Waste) located in Port Fourchon at latitude 29 degrees 8' 6.3" North, longitude 90 degrees 11' 34.2" West in Lafourche Parish.

The application is available for inspection by contacting Mr. Stephen Olivier, Office of Conservation, Environmental Division, Eighth Floor of the LaSalle Office Building, 617

North Third Street, Baton Rouge, LA. Copies of the application will be available for review at the Lafourche Parish Council in Mathews, LA or the Lafourche Parish Public Library in Golden Meadow, LA no later than 30 days prior to the hearing date. Verbal information may be received by calling Mr. Olivier at (225) 342-7394.

All interested persons will be afforded an opportunity to present data, views or arguments, orally or in writing, at said public hearing. Written comments which will not be presented at the hearing must be received no later than 4:30 p.m., Friday, December 15, 2017, at the Baton Rouge office. Comments should be directed to:

Office of Conservation
Environmental Division
P.O. Box 94275
Baton Rouge, Louisiana 70804
Re: Docket No. ENV 2017-02
Commercial Type A Facility Application
Lafourche Parish

Richard P. Ieyoub
Commissioner

1710#023

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